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

ISLEEM

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 Naseraldeen Isleem (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 after his probationary period.

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 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 it 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 17 February 2007, the Applicant joined the Agency as a Cook "B" grade 2, at the Kalandia Vocational Training Centre ("KTC") on a fixed-term appointment until 28 February 2010. His contract was subject to a probationary period of one year.

5. The Principal of KTC recommended in the Applicant's interim periodic report dated 30 April 2007 to "extend [the] report for another 3 months as the staff member [was] not executing the required duties within acceptable standards".

6. The Principal of KTC stated in the Applicant's Certificate of Satisfactory Service dated 16 and 20 February 2008 that:

   The performance of the s/m is of unsatisfactory standard during the period under review. In spite of the continuous advices [sic] and supervision, he did not improve his performance. It is
recommended to terminate his contract as he will conclude his probation year on 1-3-08.

7. By memorandum dated 24 February 2008 to the Field Personnel Officer of the West Bank, the Principal of KTC recommended the termination of the Applicant's appointment for the following reasons:

The performance of Mr. Isleem was unsatisfactory in both quality and quantity during the period under review and he is not quite as reliable as he should be.

He was issued many written and verbal letters aiming to improve his industry. He was called several times to my office and notified about his unsatisfactory industry. His direct supervisor tried continuously to assist him in order to improve his performance and to develop his skills in large quantities cooking. Unfortunately, his performance did not improve.

8. By letter dated 28 February 2008, the Applicant was informed of the decision to terminate his appointment, due to unsatisfactory performance, effective close of business on 29 February 2008.

9. Effective 29 February 2008, the Applicant was separated from service.

10. By letter dated 5 March 2008 to the Director of UNRWA Operations/West Bank, the Applicant complained of unfair treatment during his work in KTC and requested justice to his case.

11. On 30 October 2008, the Applicant filed an appeal with the JAB.

12. On 29 June 2012, the Respondent submitted his reply.

Applicant’s contentions

13. The Applicant contends that:

   (i) he did not do anything to breach his work contract;
   (ii) the decision to terminate his appointment was not in writing;
   (iii) the decision to terminate his contract was not fair.

14. Concerning the delay in filing his appeal to the JAB, the Applicant states it was due to the following:
Respondent’s contentions

15. The Respondent contends that:

(i) the application is not receivable *ratione temporis*;
(ii) the Applicant's justifications for filing his appeal late do not constitute "serious reasons" or "circumstances beyond his control".

16. The Respondent requests the Tribunal to dismiss the application.

Considerations

17. According to Article 5 of the Rules of Procedure of the UNRWA Dispute Tribunal, 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 this case – whether the application is receivable – is such a matter of law.

18. Former Area Staff Rule 111.3, which was in force at the time of the facts, provides that:

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 […]

3. 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 […]

(i) he did not know about the deadline for filing his appeal;
(ii) his colleagues Sami Mshasha and Muhammed Bedas "told [him] that such decision [was] unjust and [he would] come back to [his] job" [sic];
(iii) his involvement in a traffic accident with his son in May 2008, which took him three months to recover from.
(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.

19. Looking at the record, the Tribunal notes that the Applicant did not comply with the mandatory time limits to file an appeal before the JAB. For the sake of clarity for the Applicant, the Tribunal recalls the chronology of events:

- by letter dated 28 February 2008, the Applicant was notified of the decision to terminate his appointment after his probationary period;
- he sent a letter dated 5 March 2008 to the Director of UNRWA Operations/West Bank to complain about unfair treatment while he was working in KTC;
- he did not receive a response 30 days later, i.e. by 4 April 2008;
- therefore, he had 30 days, i.e. until 4 May 2008, to file his appeal.

The Applicant did not file his appeal with the JAB until 30 October 2008, i.e. more than five months later.

20. The Tribunal notes that the letter sent to the Director of UNRWA Operations/West Bank is not a clear request for decision review. However, even if the Tribunal gives the benefit of the doubt to the Applicant and considers it as such, the Applicant still failed to pursue his claim before the JAB in a timely manner.

21. The United Nations Appeals Tribunal has consistently reaffirmed the importance of observing the time limits prescribed for the various stages of the appeal process, noting that time limits are of utmost importance for ensuring the smooth functioning of any administration and must be interpreted restrictively, Mezoui 2010-UNAT-043.

22. 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 only in exceptional circumstances. However, the burden is on the Applicant to demonstrate that he/she was prevented from lodging his/her appeal in time due to
“serious reasons” or because of “circumstances beyond [his] control”, as held by the United Nations Appeals Tribunal in Diagne et al. 2010-UNAT-067.

23. In the case at hand, the Tribunal finds that the Applicant has failed to demonstrate that he was prevented from submitting his application in time due to serious reasons or to circumstances beyond his control.

24. Indeed, the Applicant has not provided any evidence – convincing or otherwise – of the traffic accident that he claims to have suffered in May 2008, and which he alleges took him three months to recover from. The Tribunal would like to remind the Applicant that, in order for the Tribunal to consider any allegation, by either side, documentary evidence is required. The Tribunal will not take into account mere statements by the parties, as they do not constitute probative evidence.

25. As stated by the UNAT in Diagne et al. 2010-UNAT-067, ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Regulations and Rules. Furthermore, the Applicant cannot rely on the discussions with his colleagues and their advice about the unfairness of the decision as an excuse for filing his appeal late.

26. Consequently, the Tribunal finds that the application is not receivable **ratione temporis**.
Conclusion

27. For the reasons provided above, the application is dismissed.

____________________Signed

Judge Bana Barazi

Dated this 3rd day of July 2012

Entered in the Register on this 3rd day of July 2012

____________________Signed

Laurie McNabb, Registrar, UNRWA DT, Amman