CHAABAN

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 Judgment deals solely with the question of receivability of the claim. The question for decision is whether the Applicant launched his appeal with the Joint Appeals Board (the "JAB") within the statutory time limits. If the Tribunal finds that he did the Respondent will be given leave to file a reply to the substantive merits of the claim. On the other hand if the Tribunal finds that the claim is not receivable the appeal will be dismissed.

2. Given the fact that the Tribunal is concerned with the preliminary issue of receivability it will refrain from making any factual findings on the substantive merits of the case. The Tribunal's findings will be limited to facts necessary to determine the question whether the claim is in time.

3. This is an application by Mr Houssam Chaaban (the “Applicant”), a staff member at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the “Respondent”, “the Agency”), against the decision to not shortlist him and invite him to sit the written test for two posts for which he applied, that of Information Systems Helpdesk Coordinator ("ISHDC") and School Information and Communications Technology Coordinator ("SICTC").

4. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the JAB was abolished as of 1 July 2009. With effect from 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. During this transition period the Respondent did not respond to this application within the prescribed 30 day time limit. The Tribunal considered that it would be in the interest of justice to allow the Respondent an extension of time to file its reply by 18 August 2012.
Facts

5. On 19 July 2005 the Applicant commenced employment with the Agency as an Information Systems Technical Assistant for the Palestinian Refugees Records Project, grade 12. On 16th of November 2006 he was promoted to the post of Scanning Team Supervisor at grade 14. His employment ended with the closure of the project on 28 February 2009.

6. Prior to the termination of the project the Applicant applied for two posts, that of ISHDC and SICTC. He was not invited to sit the written tests for these posts, which took place on 8 January 2009.

7. On two separate occasions the Applicant made representations regarding the failure to invite him to sit the written tests. The first enquiry was by e-mail dated 22 January 2009 to the Field Eligibility and Registration Officer, Lebanon ("FAO/L"). This e-mail was replied to by the FAO/L on 22 January with a brief explanation as to the reason why the Applicant was not invited to sit the tests.

8. The Applicant was not satisfied with this explanation. By letter dated 28 January 2009 to the Director of UNRWA Affairs/Lebanon ("DUA/L"), the Applicant requested a review of the administrative decision not to invite him for a test in connection with both applications. This request for review was within the requisite time limits.

9. However, the Respondent did not respond to this request within the period of 30 days as required under former Area Staff Rule 111.3(2)(B). Therefore, the applicant had to file his appeal within a further period of 30 days. In the circumstances his appeal should have been filed within the period of 60 days of the request, dated 28 January 2009, for administrative review.

10. On 28 February 2009 the Applicant was separated from service with the Agency on the expiry of this fixed term appointment.

11. By a letter dated 16 March 2009 the DUA/L provided full reasons for not shortlisting the Applicant for either post. The Applicant has mounted a strong challenge to the reasons provided. However, it is not the purpose of this judgment to
make findings on the respective merits of the parties' contentions.

The Law

12. Former Area Staff Rule 111.3, which was applicable at the time, provided 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.

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 JAB within the following time limits:

   (B) in the case of staff members of Field Offices, within 30 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 members letter, then within the next thirty days.

13. The United Nations Appeals Tribunal has consistently reaffirmed the jurisprudence of the former United Nations Administrative Tribunal regarding the importance of observing the time limits prescribed for the various stages of the appeal process. As stated in Mezoui 2010-UNAT-043 time limits are of utmost importance in ensuring the smooth functioning of any administration and must be interpreted restrictively.
14. Former Area Staff Rule 111.3, provides at paragraph 4 that:

   An appeal shall not be receivable by the Joint Appeals Board unless the above time limits have been met, provided that the Board may waive these time limits in exceptional circumstances.

However, the burden in such cases is on the Applicant to demonstrate that he was prevented from lodging his appeal in time due to the exceptional circumstances of the case.

Considerations

Does the Tribunal have jurisdiction to consider the substantive merits of this claim?

15. The letter dated 16 March 2009, providing full details of the grounds upon which the Applicant was not invited to sit the tests, does not have the effect of an automatic extension of time. The time for filing an appeal started running when the Applicant requested administrative review on 28 January 2009. Since the Respondent failed or omitted to reply within 30 days the time for filing the appeal expired on 29 March 2009.

16. The appeal was dated 2 April 2009.
Conclusion

17. For the reasons stated above, the Applicant’s claim is not receivable. The Tribunal has no jurisdiction to consider the substantive merits of the claim. The appeal is dismissed.

(Signed)
Judge Goolam Meeran
Dated this 21st day of August 2012

Entered in the Register on this 21st day of August 2012

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