MURAD

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 issue of receivability of the claim. The question to be decided is whether the Applicant filed his appeal to the UNRWA Dispute Tribunal ("the Tribunal") within the statutory time limit prescribed in the UNRWA Dispute Tribunal Statute.

2. Given that the Tribunal is concerned with the preliminary issue of receivability it will refrain from making factual findings on the substantive merits of the case except to the extent necessary to determine whether the claim is receivable.

3. This is an application by Ayman Murad (the "Applicant"), a staff member at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the "Respondent"), against a decision not to short-list him for the position of Education Program Specialist, P-3. The Applicant also alleges that as a consequence of the decision not to short-list him he was not considered for a second unadvertised post, with the same description and grade as the advertised post, which was filled by one of the unsuccessful candidates short-listed for the first post.

4. The Applicant filed an appeal with the Tribunal dated 24 March 2011; the application was received by the Tribunal on 27 March 2011.

5. On 21 September 2012 the Respondent filed the Reply and annexes. The documents were forwarded to the Applicant on the same day.

Facts

6. On 7 September 1992 the Applicant commenced employment with the Respondent as a Teacher, Level B. Thereafter the Applicant occupied a number of posts within the Agency, with increasing levels of responsibility. From 4 June 2006 to the present the Applicant has occupied the position of Head, Education Information Technology Unit within the Education Department.
7. On 25 July 2010 the Respondent issued vacancy announcement no. 10-HQ-AM-60 for the post of Education Program Specialist, P-3. The deadline for applications was 25 August 2010. The Applicant applied, but was not short-listed, for the post and consequently he was not invited to take any further part in the recruitment process.

8. By email to the Chief, Personnel Services Division (“C/PSD”) dated 13 October 2010, the Applicant noted that he had been short-listed for a number of similar posts within UNRWA and other United Nations agencies in the past and stated that he was shocked that he had not been short-listed for the Education Program Specialist post. He requested decision review.

9. By email dated 23 October 2010 the C/PSD responded to the Applicant, stating:

In assessing your candidacy, it was noted that your experience is in ICT and not truly relevant to the requirements of this post.

The C/PSD then advised the Applicant of the correct procedure for requesting decision review.

10. By email to the Director of Human Resources dated 25 October 2010 the Applicant requested a formal review of the decision not to short-list him for the Education Program Specialist post. The Applicant set out his employment history which, he argued, contradicted the explanation for not short-listing him given by the C/PSD and stated that he did “not feel that my CV was fairly treated in this exercise…”

11. By email to the Deputy Commissioner-General and the Director of Human Resources, copied to the Tribunal Registrar, dated 25 January 2011 the Applicant stated as follows:

I wanted to amend my case by the following fact regarding my candidature status for the post as Education Specialist P3 level at Education Department – HQ(A).

Initially the agency announced for one P3 post as Education Specialist for which one candidate was selected and joined the Education Department on the beginning of this year. Now I learned
that another candidate who was also interviewed for that post will join the Education Department as Education Specialist P3 level though the second post was never ever advertised.

12. The Applicant filed an appeal with the Tribunal dated 24 March 2011; the application was received by the Tribunal on 27 March 2011. On 21 September 2012 the Respondent filed a reply and annexes. These documents were forwarded to the Applicant by the Tribunal Registrar on the same day.

**Applicant’s contentions**

13. The Applicant contends that:

   (i) He has been given no logical reason why he was not short-listed for the Education Program Specialist post. The explanation given by the C/PSD is at odds with his past experience of being short-listed for similar positions at UNRWA and UNESCO.

   (ii) “…[T]he short listing was not done properly and it was done in away [sic] to exclude some staff and open the back door for others.”

   (iii) “The advertisement was done for only one post but 2 candidates were hired from the same process though only one post was created at the time of the recruitment…”

   (iv) “…[T]here might be some conspiracy by not short listing me or other candidates and give the impression that one was hired and then silently hiring another one whom I question the process of short listing.”

14. The Applicant seeks the following remedies:

   (i) Financial compensation for the decision not to short-list him, because it prevented him from getting either of the positions;

   (ii) Compensation for moral damages; and

   (iii) Re-advertisement of the two posts.

**Respondent’s application for an extension of time**

15. In a detailed submission the Respondent acknowledged that it failed to comply with the time limit for filing a reply in compliance with Article 6(1) of the Tribunal’s Rules of Procedure. The detailed grounds include the following submissions of substance:
(i) Article 30 of the Rules of Procedure of the Tribunal provides that:

Subject to the Statute of the Dispute Tribunal, including in particular articles 8.3 and 8.4, the Judge hearing a case may shorten or extend a time limit fixed by these Rules or waive any rule when the interests of justice so require.

(ii) On case management, Article 14 of the Rules of Procedure of the Tribunal provides that:

The Tribunal may, at any time, either on application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties.

(iii) The Respondent requests leave to take part in the proceedings and submits that its failure to comply with Article 6(1) of the Rules of Procedure of the Tribunal is because the Agency has insufficient resources to respond to the backlog of appeals from the Joint Appeals Board, which accumulated prior to and pending the establishment of the UNRWA Dispute Tribunal on 1 June 2010, and the backlog of application to the Tribunal which continues to accumulate since its establishment.

Respondent’s contentions

16. The Respondent contends that:

(i) Although the Respondent has filed its Reply outside the statutory time limits, it would be in the interests of justice to grant leave for the Respondent to take part in proceedings.

(ii) The application is time-barred as the appeal to the Tribunal was filed out of time.

17. The Respondent requests the Tribunal to dismiss the Application in its entirety.

Considerations

Should the Respondent be granted leave to take part in these proceedings?

18. Having considered the grounds in support of the application to extend time the Tribunal considers that it would be in the interests of justice to accept the Respondent’s Reply and to permit the Agency to take part in these proceedings.
Is the application receivable?

19. Article 8 of the Statute of the UNRWA Dispute Tribunal provides:

1. An application shall be receivable if:

   …

   (d) The application is filed within the following deadlines:

   (i) Within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or

   (ii) Within 90 calendar days of the expiry of the relevant response period for the decision review if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to decision review;

   …

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend, waive or extend the deadlines for a limited period of time and only in exceptional cases.

20. Questions relating to the receivability of a claim go to the jurisdiction of the Tribunal. It is for the Tribunal to decide whether it has jurisdiction to consider a claim. If the Tribunal does not have jurisdiction, that is the end of the matter as far as the Tribunal is concerned and it is not required to adjudicate on the merits of the claim.

21. The Applicant submitted his request for decision review on 25 October 2010. According to the Respondent’s submissions the Applicant was sent no reply in response to this request. Therefore, the 90-day deadline for filing his appeal with the Tribunal began running from 25 November 2010, the day after the 30-day response period ended. The time-limit for filing his appeal was not reset by his further email dated 25 January 2011; the Applicant had until 22 February 2011 to file a receivable appeal. His application was received on 27 March 2011 and is therefore time-barred.

22. What constitutes an “exceptional case” is to be considered on a case-by-case basis. The Applicant has not in his appeal provided any facts, arguments or
submissions of substance which could legitimately and reasonably be construed as justifying the delay in submitting his appeal. In the circumstances there are no grounds upon which the Tribunal could fairly and legitimately waive the time limit in this case.

**Judgment**

23. The application is dismissed in its entirety.

(Signed)

Judge Goolam Meeran
Dated this 30th day of September 2012

Entered in the Register on this 30th day of September 2012

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman