KHADER

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 Waleed Khaled Khader (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 services on grounds of post redundancy.

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 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

4. On 1 September 1981, the Applicant entered the service of the Agency as Trades Instructor (Auto-Mechanic) grade 9 step 1, at the Damascus Vocational Training Centre (“DVTC”) in Damascus, Syria. At the time of the events relating to the application, the Applicant occupied the same post at grade 11 step 22.

5. By letter dated 27 August 2009, the Officer-in-Charge, UNRWA Affairs, Syria Field Office informed the Applicant that the post he occupied was being deleted following a review of the staffing needs at the DVTC. The Officer-in-Charge noted in her letter to the Applicant that:

**Therefore, you are hereby declared provisionally redundant for a period of three months from the date of this letter, during which the Agency shall try to find you a suitable alternative post commensurate with your qualifications. In case no suitable alternative placement is found by the end of**
this period, your services shall be terminated on grounds of redundancy and the notice period of termination provided for by Area Staff Regulation No. 9.1 shall be considered to have been granted to you.

6. By letter dated 14 October 2009 to the Field Administration Officer, Syria (“FAO/SAR”), the Applicant pointed out, *inter alia*, that he has been working with the Agency for 29 years and does not think he can get a job elsewhere due to his age. The Applicant added that many other UNRWA employees who had also been declared redundant had already been granted alternative jobs by the Agency—some with equal or lesser qualifications. The Applicant continued stating that there were certain posts in the Agency which were commensurate with his qualifications such as the post of Dispatcher at the Supply and Transport Department or the post of Clerk at the Social Welfare Department among others.

7. In a joint memorandum dated 12 November 2009 and 15 November 2009 to the Director of UNRWA Affairs, Syria (“DUA/SAR”), the Applicant and another staff member explained that after their posts had been abolished the Agency was not able to find them alternative posts within a period of three months, although many posts were vacant. They also complained that they felt they were discriminated vis-à-vis other staff members who were friends of the Principal of the DVTC who had been transferred to alternative posts when their posts were found to be redundant.

8. By letter dated 19 November 2009, the FAO/SAR advised the Applicant that the Agency had failed to re-deploy him to another post, with the following explanations:

   1. As you have only an elementary education certificate as an academic education, the Director of UNRWA Affairs exceptionally waived the academic qualification requirement for vacancies subject to consideration with a view to enable you be [sic] considered along with other candidates, provided that you should meet other essential requirements for respective vacancies.

   2. Based on the above, you were considered for the following posts: [C]lerk B, and Learning Resource Centre Assistant in Education Programme; Clerk A and Credit Extension Assistant in Microfinance
Department; Personnel Clerk in Administration Department; Senior Clerk in Relief and Social Services Programme; Health Centre Clerk in Health Programme; and Dispatcher at Field Procurement and Logistics Department.

3. We were successful in short-listing you for the post of Dispatcher only, provided you have to sit for the required technical test for the post along with other candidates.

4. Unfortunately, you did not meet the job profiles for other posts. At the same time, no vacancy of the post of Librarian or Health Centre Clerk existed at the time of the review; neither does either of them exist now.

I have to state and remind you that all the above was communicated to you through the meetings I, my deputy, and Field Personnel Officer, conducted with you on several days during the past period (on 11, 13, 15, and 18 October and 3 November 2009).

9. By letter dated 26 November 2009, the Applicant expressed his disagreement with the response of the FAO/SAR dated 19 November 2009, considering that what was said about his qualifications was a personal insult, enumerating to the FAO/SAR the various certificates he held and the 29 years of teaching experience with UNRWA. The Applicant insisted on being transferred to one of the vacant posts.

10. By letter dated 9 December 2009, the FAO/SAR confirmed to the Applicant that his services were terminated on grounds of post redundancy effective 30 November 2009.

11. By letter dated 14 December 2009, the Applicant requested to be separated on grounds of Early Voluntary Retirement (“EVR”) effective 1 December 2009. The Applicant also requested that his rights to appeal against the Agency in order to obtain an alternate post be preserved.

12. By letter dated 15 December 2009, the Field Personnel Officer informed the Applicant that his request was granted effective close of business 30 November 2009. On that date, the Applicant was separated from the Agency on grounds of EVR.
13. By letter dated 24 February 2010, the Applicant filed his appeal with the JAB.

14. On 30 November 2012, the Respondent filed his reply.

**Applicant’s contentions**

15. The Applicant contends that:

   (i) his post was deleted on grounds of redundancy and that the Agency was unable to find an alternative post for him although some posts (that he was qualified for) were vacant at the time of his separation from the Agency;

   (ii) the Agency has been able to find alternative posts for other staff members whose posts were declared redundant and deleted and that these posts were given to those employees that were close to the Principal of DVTC.

16. The Applicant requests that the Agency find him an alternative post and grant him compensation.

**Respondent’s contentions**

17. The Respondent contends that:

   (i) no appealable administrative decision has been presented;

   (ii) the application is not receivable because the Applicant failed to request administrative review of the contested decision.

18. The Respondent requests that the Tribunal reject the application.
Considerations

Preliminary Issue

19. As stated above, the Respondent submitted his reply on 30 November 2012. In his reply to the application, the Respondent requested leave from the Tribunal to take part in the proceedings.

20. Article 30 of the Rules gives the authority to the Tribunal to shorten or extend a time limit fixed by the Rules or waive any rule when the interests of justice so require. Pursuant to Article 14 of the Rules, the Tribunal may make any order or give any direction which appears to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties. It is the Tribunal’s belief that submissions from both parties will better equip the Tribunal to render a fair and comprehensive judgment. Therefore, the Tribunal finds it is in the interests of justice – and that it would be appropriate for a fair and expeditious disposal of the case and would do justice to the parties – for the Tribunal to extend the time limit under Article 6 and accept the late filing of the Respondent’s reply. Therefore, the Tribunal accepts the Respondent’s reply.

Main Issues

Is the Applicant contesting an administrative decision?

21. With regard to the types of decisions which are appealable, former Area Staff Regulation 11.1 (A), in force at the time of the facts, provides that:

The Commissioner-General shall establish a Joint Appeals Board with staff participation to advise him in case of any appeal by a staff member against an administrative decision alleging the non-observance of his or her terms of appointment, including all pertinent regulations and rules, or against disciplinary action.

22. In accordance with Article 2(a) of the UNRWA Dispute Tribunal Statute, the Tribunal has jurisdiction to hear and pass judgment on an application filed by an individual to appeal an “administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.
23. The jurisprudence of the former United Nations Administrative Tribunal has defined an administrative decision as:

...a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. (Judgment No. 1157, *Andronov* (2003), quoted in Judgment No. 1213, *Wyss* (2004)).

24. The record indicates that prior to the completion of the various steps in connection with the termination of the Applicant’s service on grounds of post redundancy, such as finalisation of the Personnel Action Form and payment of entitlements, the Applicant requested - and was granted - early voluntary retirement effective close of business 30 November 2009. The Applicant is reminded that he made a unilateral and voluntary decision to leave the Agency’s service on early voluntary retirement, and the Agency agreed to his request. Therefore, the Agency’s initial decision to terminate his employment on grounds of post redundancy was superseded and never executed. The Applicant must understand that he cannot contest a decision that was never implemented, i.e. his separation on the basis of redundancy, as it was superseded by his request for early voluntary retirement, a request granted by the Respondent. Plainly said, the Applicant cannot have his cake and eat it too.

25. In light of the above, the Tribunal finds that there is no discretionary administrative decision presented for the purposes of this appeal1.

26. However for argument’s sake, if one is to presume that there was an administrative decision to be appealed, then one must ask the following question:

---

1 The Tribunal would like to note that the Agency’s decision to grant the Applicant’s request for EVR per Area Staff Rule 109.2 is indeed an administrative decision. However is not the subject of this application.
Has the Applicant requested administrative review?

27. Former Area Staff Rule 111.3, in effect 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, and shall be addressed:

* * *

(B) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office.

28. The former United Nations Administrative Tribunal has confirmed that administrative review is an essential element of the recourse procedure, noting in Judgment No. 905, *El Far* (1998), at paragraph III:

Administrative review under the UNRWA Area Staff Rules is not a mere embellishment or option. It is an integral part of internal procedures and the rules require that it be exhausted. The Staff Rules make administrative review an obligatory internal procedure, and not an optional one nor one that can be waived, except by the Respondent.

29. The United Nations Appeal Tribunal, in *Crichlow* 2010-UNAT-035, confirmed that United Nations Dispute Tribunals do not have jurisdiction *ratione materiae* over complaints that were not subject to administrative review, where administrative review was a mandatory step under the relevant staff rules², and that this preliminary step must be exhausted before the jurisdiction of the Dispute Tribunal can be invoked, *Planas* 2010-UNAT-049. It also held, in *Costa* 2010-

---

² Note that the UNRWA Dispute Tribunal was modelled after the United Nations Dispute Tribunals’ Rules of Procedure. Moreover, under the regulatory framework of UNRWA, administrative review is a required step.
UNAT-036, that the United Nations Dispute Tribunal could not waive time limits for management evaluation or administrative review.

30. Looking at the record, the Tribunal notes that the Applicant has not made any request for administrative review as is required under Area Staff Rule 111.3 nor has the Respondent waived this requirement. Per Area Staff Rule 111.3, the Applicant must first address a letter to the Agency requesting review of the contested administrative decision. The Tribunal notes that after he was informed by letter dated 9 December 2009 of the Agency’s decision to terminate his appointment on the grounds of post redundancy, the Applicant has not at any time submitted to the DUA/SAR a request for administrative review of the impugned decision.

31. Indeed, had there been an appealable administrative decision, the Tribunal would [still] have found the application not receivable because the Applicant failed to comply with the requirement of submitting a written request for administrative review under Area Staff Rule 11.3, a requirement the Tribunal has no jurisdiction to waive. Accordingly, the Tribunal finds the application is not receivable.

Conclusion

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

(Signed)
Judge Bana Barazi
Dated this 18th day of December 2012

Entered in the Register on this 18th day of December 2012

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