RAMADAN

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Nabil Khamis Ramadan (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 determine that the Applicant’s alleged illnesses were not attributable to the performance of his official duties on behalf of the Agency.

Facts

2. Effective 31 May 2000, the Applicant was employed by the Agency on a fixed-term appointment as an X-Ray Technician at the Department of Health at Level 2B in Gaza. Effective 1 August 2004, the Applicant’s appointment was converted from Category Z to X and he was granted a fixed-term appointment as an X-Ray Technician at Grade 7. The Applicant retired from service on grounds of age effective 31 July 2012.

3. By a waiver dated 2 August 2012, the Applicant declined to undergo the medical examination required by the Agency and waived all claims against the Agency in respect of sickness or health disability.

4. By memorandum dated 16 September 2012, the Applicant sought compensation due to illness occasioned by radiation.

5. By memorandum dated 21 September 2012, the Applicant requested the Agency to pay “full compensation for the health consequences [he] sustained as a result of the dangerous [r]adiation leakage”. He attached to his request a copy of a medical report.

6. By memorandum dated 13 November 2012 addressed to the Director of UNRWA Operations, Gaza (“DUO/G”), the Applicant sought compensation for “work injury”.
7. By email dated 7 December 2012 to the Commissioner-General and the DUO/G, the Applicant requested “full compensation for worked-related injur[ies]”.

8. By letter dated 9 December 2012, the Field, Legal Officer, Gaza (“FLO/G”), informed the Applicant that the Gaza Field Office (“GFO”) had commenced its enquiry into his alleged injury claim and that he would be notified within 30 days about the progress of his case.

9. A Medical Board was convened on 20 January 2013 to examine the Applicant. The Medical Board’s terms of reference were *inter alia* to render a medical opinion regarding the relation between the Applicant’s claimed injuries and the performance of his duties. In its report, the Medical Board concluded that “there [was] no link or relation or association between his complaints and [the] effects of radiation”.

10. By letter dated 27 January 2013 to the FLO/G, the Applicant expressed objections to the conclusions of the Medical Board and requested to be referred to a hospital in the West Bank, Jerusalem or Israel in order to undergo further medical examinations.

11. On 4 February 2013, the Chief, Field Health Programme agreed with the conclusions of the Medical Board.

12. By letter dated 25 February 2013, the Head, Field Human Resources Office (“HFHRO”) informed the Applicant of the conclusions of the Medical Board. Based on the Medical Board’s conclusions, the HFHRO determined that the Applicant’s alleged illnesses were not attributable to the performance of his official duties on behalf of the Agency.

13. On 9 April 2013, the Applicant filed an application with the UNRWA Dispute Tribunal (“the Tribunal”).

14. On 28 June 2013, the Respondent filed a reply.
15. Upon the Applicant's request, by Order No. 061 (UNRWA/DT/2013) dated 3 July 2013, the Tribunal ordered the Respondent to provide a summary of the reply in Arabic.

16. On 15 July 2013, the Respondent submitted a summary of the reply in Arabic.

17. On 18 August 2013, the Applicant provided his comments on the summary of the reply.

Applicant's contentions

18. The Applicant contends that:

i) he worked from 31 May 2000 to 31 July 2012 in the X-Ray Section of the Rafah Central Clinic. During his work, he was exposed to high radiation leaks as the X-Ray room was not equipped with the required protection;

ii) a clinical examination revealed that he was suffering from numerous diseases which resulted from his exposure to radiation during his work;

iii) he is now unemployed and disabled even to carry out his personal needs. He is responsible for a family of six members and he is suffering from a broken wrist. He has been classified as a "hardship case";

iv) the Medical Board that reviewed his case did not have specialists in the field of radiation exposure and how to deal with it;

v) the Medical Board that decided his case was completely biased because all the doctors were from the Agency and were selected by the Health Department Officer in Gaza; and

vi) the waiver note dated 2 August 2012 that he signed when he left the Agency was written in English, a language that he understands with difficulty. The content of this note was translated to him by an
employee of the Finance Department who forced him to sign it under pressure. He told the Applicant that he would not receive his benefits and entitlements from the Agency if he did not sign the waiver.

19. The Applicant requests:

i) remedies according to the percentage of his medical disability and the suffering that he had been though for several years; and

ii) the establishment of a Medical Board to examine him in relation to his exposure to radiation.

Respondent’s contentsions

20. The Respondent contends that:

i) the Applicant waived all claims against the Agency: on 2 August 2012, the Applicant declined to undergo a medical examination and waived all claims against the Agency. The jurisprudence of the United Nations Administrative Tribunal states that “commitments, whether made by the Administration or by staff members must be honoured. Pacta sunt servanda”;

ii) the Applicant has neither referred to nor called into question the waiver of 2 August 2012;

iii) the Applicant failed to submit a written request for decision review before filing an application to the Tribunal. The Applicant submits that he requested review of the contested decision on 19 February 2013. However, the contested decision is dated 25 February 2013 and therefore, the Applicant could not have requested review before the decision was made and he did not attach a copy of his decision review request to his application; and

iv) the decision of the Agency adopting the conclusions of the Medical Board was properly effected.
21. The Respondent requests that the Tribunal dismiss the application in its entirety.

Considerations

22. The Applicant contests the decision dated 25 February 2013 by which the HFHRO, following the conclusions of the Medical Board, determined that the illnesses he complained about were not attributable to the performance of his official duties on behalf of the Agency.

23. The Tribunal notes discrepancies in the application. While the contested decision is dated 25 February 2013, the Applicant indicated in his application that he requested review of the decision on 19 February 2013 and that he received a response to his request on 22 January 2013. Noting the discrepancies in the application, the Tribunal, by email dated 8 May 2013, requested the Applicant to clarify the information contained in his application and to provide the Tribunal with several documents, in particular, his request for decision review and the reply to his request. However, the Applicant did not comply with the Tribunal’s instructions.

24. The Tribunal also notes that while the Respondent argued in his reply that the Applicant failed to submit a written request for decision review, the Applicant did not contest this issue or provide any clarification in this regard in his observations to the reply.

25. The Tribunal has not found in the case file any document which could be considered a request for review of the above-mentioned decision. As the contested decision is dated 25 February 2013, any request for decision review should logically have been submitted afterwards. Therefore, any claim or request prior to the notification of the administrative decision cannot be considered as a valid request for decision review.

26. The Tribunal points out that the Applicant has the burden of proof to establish that he has complied with the mandatory requirements of Area Staff Rule 111.2.
27. Area Staff Rule 111.2 provides:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 111.1 (A), shall, as a first step, submit a written request for a decision review:

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

* * *

3. A staff member shall submit a request for decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

28. The United Nations Appeals Tribunal ("UNAT") held in Ajdini et al 2011-UNAT-108 that:

An application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.

29. Looking at the record, the Tribunal notes that the Applicant has not requested at any time review of the alleged contested decision as required under Area Staff Rule 111.2 prior to filing an application before the Tribunal. Considering that it has no jurisdiction to waive the requirement of a prior request for decision review, the Tribunal finds that the application is not receivable.

Conclusion

30. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed.

Judge Jean-François Cousin

Dated this 4th day of December 2014
Entered in the Register on this 4th day of December 2014

Laurie McNabb, Registrar, UNRWA DT, Amman