MUSA

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 Marzouk Ahmed Musa (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”), not to extend his appointment beyond the age of retirement.

Facts

2. Effective 1 December 1977, the Applicant entered the service of the Agency as a Teacher “D” on a temporary indefinite appointment at Kurdani Elementary School, Damour, Central Lebanon.

3. After several promotions, effective 16 January 2009, the Applicant was appointed Area Education Officer, Grade 15, Saida, Lebanon.

4. By letter dated 6 August 2013, the Human Resources Services Officer (“HRSO”) notified the Applicant of his 30 September 2013 separation from duty on the basis of age.

5. By email dated 12 August 2013 to the Director of UNRWA Affairs, Lebanon (“DUA/L”), the Applicant recalled that he had not received any response to his request for extension of his contract beyond the retirement age.

6. By email dated 13 August 2013 to the Applicant, the Head, Field Human Resources Officer (“HFHRO”) rejected the Applicant’s request for extension of his contract.

7. By email to the DUAL/L dated 27 September 2013, the Chief, Field Education Programme (“CFEP”) recommended the extension of the Applicant’s services for the remainder of the scholastic year.

8. By letter dated 30 September 2013, the HFHRO informed the Applicant that his contract had been extended until the end of the school year, i.e. until 30 June 2014.

9. By email to the DUA/L dated 17 March 2014, the Applicant sought an extension of his services beyond 30 June 2014.

10. By letter dated 18 March 2014, the Deputy Director of UNRWA Affairs, Lebanon (“D/ DUA/L”) informed the Applicant that no further extension would be granted.
11. The Applicant filed his application on 9 April 2014.

12. On 17 April 2014, the application was transmitted to the Respondent.

13. On 19 May 2014, the Respondent filed his reply.

Applicant’s contentions

14. The Applicant contends:

i) That he has a right to a two-year extension beyond his sixtieth birthday, regardless of the agreement between the Area Staff Union ("ASU") and the Agency;

ii) The agreement between the ASU and the Agency was scheduled to be implemented in 2014, therefore depriving the 2013 retirees, including the Applicant, of benefitting from the extension of service;

iii) The extension of his contract until June 2014 was linked with the Reform Scheme in Education, a process that had not been completed upon his separation;

iv) The Agency’s classification of all Area Education Officers as Grade 17, with the exception of Lebanon, is unfair; and

v) The decision not to extend his contract deprives him of one year’s salary at Grade 17.

15. The Applicant requests that his appointment be extended until September 2015.

Respondent’s contentions

16. The Respondent contends:

i) That the application is not receivable because the Applicant failed to submit a written request for decision review before filing an application, per Area Staff Rule 111.2; and

ii) In the alternative, if the request for decision review was that of 17 March 2014, the request for decision review is late.

17. The Respondent requests that the application be dismissed in its entirety.

Considerations

18. Based on the filings, it appears to the Tribunal that the Applicant is contesting the Agency’s 18 March 2014 rejection of his request for an extension beyond the age of retirement.
The Respondent submits that the application is not receivable because the Applicant failed to submit a request for decision review before filing his application. Area Staff Rule 111.2 in relevant part, provides that:

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 11.1 (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 a decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

19. On 17 March 2014, the Applicant requested an extension of his services and, by letter dated 18 March 2014, the D/DUA/L rejected the request. Following the D/DUA/L’s rejection, there is no evidence that the Applicant requested decision review. The Applicant cannot allege that the 17 March 2014, request for an extension is a timely request for decision review, as it was sent prior to the final decision that was made on 18 March 2014.

20. In his application received on 9 April 2014, the Applicant attached an undated request for decision review. The Respondent submits that the Applicant did not at any time, prior to filing his application, submit a written request for decision review. The Tribunal recalls that it is the Applicant who bears the burden proving that he submitted a timely request for decision review.

21. If the Applicant is suggesting that the 17 March 2014 letter to the DUA/L was indeed a request for decision review of the 30 September 2013 decision, the request is nevertheless time-barred. Area Staff Rule 111.2 clearly states that the request for decision review must be submitted within 60 calendar days from the date on which the staff member received notification of the contested decision. The Applicant received the decision on 30 September 2013 and therefore had 60 calendar days from receipt to request decision review.
22. It follows from the above that the application is not receivable.

Conclusion

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

The application is dismissed.

____(Signed)_______
Judge Jean-François Cousin
Dated this 21st day of June 2015

Entered in the Register on this 21st day of June 2015

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