HASHEM

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 Aqil Wael Rawhi Hashem (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 renew his appointment beyond 31 December 2014.

Facts

2. Effective 13 May 2006, the Applicant joined the Agency as a Credit Extension Assistant (“CEA”), Microfinance and Microenterprise Department (“MMD”) Nablus Branch on a fixed-term appointment expiring on 31 December 2006. The Applicant’s appointment was extended several times until 31 December 2014 and his post was re-titled to Loan Officer.

3. On 29 May 2011, the Applicant’s performance was rated as unsatisfactory in his Periodic Report.

4. On 21 May 2012, the Applicant’s performance was rated as “A staff member who maintains only a minimum standard of efficiency” in his Periodic Report.

5. In the Applicant’s Quarterly Evaluation Form for the fourth quarter of 2013, the Branch Manager (“BM”) noted the Applicant’s “low and unacceptable productivity”.

6. In the beginning of May 2014, the Applicant was enrolled in an informal Opportunity to Improve Programme (“informal OTI”) for a period of three months.

7. By memorandum dated 4 August 2014 to the Performance Management Officer (“PMO”), the Chief Field Microfinance Programme (“CFMP”) explained that the Applicant had failed to improve his performance during the informal OTI Programme. The Applicant was then enrolled in a formal OTI Programme for a period of three months.

8. By email dated 24 November 2014 to the PMO, the CFMP explained that the Applicant had failed to improve his performance during the formal OTI Programme.
9. On 24 November 2014, the BM recommended that the Applicant’s contract not be renewed.

10. By email dated 24 November 2014, the Credit Operations Manager (“COM”) endorsed the BM’s recommendation not to renew the Applicant’s contract.

11. By letter dated 1 December 2014, the Director of UNRWA Operations, West Bank (“DUO/WB”) notified the Applicant of the decision not to renew his contract beyond 31 December 2014.

12. On 31 December 2014, the Applicant’s contract expired and he was separated from service.

13. On 13 March 2015, the Applicant submitted his application to the Tribunal.

14. By Order No. 055 (UNRWA/DT/2015) dated 14 May 2015, the Tribunal ordered the Respondent to translate the reply from English into Arabic.

15. On 23 June 2015, the Respondent submitted the translated reply. The Tribunal transmitted the translated reply to the Applicant on that same day.

16. By Order No. 109 (UNRWA/DT/2015) dated 13 October 2015, the Tribunal ordered the Applicant to submit evidence demonstrating that he had submitted a written request for decision review. The Applicant did not file any response.

**Applicant’s contentions**

17. The Applicant contends:

   i) In early 2013, part of his authority was taken away and as a result his dispensed loan applications declined;

   ii) From 2004 to 2010 he was very productive, however, there were changes in the local market; and

   iii) From 2011 to 2013, he continued to produce positive results in spite of the changes in the local market.
18. The Applicant requests “fair material compensation”.

**Respondent’s contentions**

19. The Respondent contends:

i) The Applicant failed to submit a written request for decision review. While the Applicant has annexed to his application “a request for decision review” form, it was never received either by the Office of the DUO/WBFO or the Office of the Deputy Commissioners-General (“DCG”);

ii) The decision not to extend the Applicant’s appointment was properly effected;

iii) The decision not to extend the Applicant’s appointment was based on his performance shortcomings and properly documented; and

iv) The Applicant was placed on an informal and formal OTI Programmes, however, he continued to perform at a less than satisfactory level

20. The Respondent requests the Tribunal to dismiss the application in its entirety.

**Considerations**

21. Annex 2 of the application is the Applicant’s alleged request for decision review dated 7 December 2014. In his reply, the Respondent submits that the Applicant has not at any time submitted a written request for decision review to either the Office of the DUO/WB or the Office of the DCG as required by Area Staff Rule 111.2. By Order No. 109 (UNRWA/DT/2015) dated 13 October 2015, the Tribunal ordered the Applicant to submit evidence demonstrating that he had submitted a written request for decision review to the appropriate person. The Applicant never submitted evidence in response to Order No. 109 (UNRWA/DT/2015).

22. Area Staff Rule 111.2 on decision review 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 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 decision review within 60 calendars days from the date on which the staff member received notification of the administrative decision to be contested.

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

24. As the Applicant has not established that he had submitted a request for decision review of the contested decision, his application is not receivable.

Conclusion

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

The application is dismissed.

(Signed)
Judge Jean-François Cousin
Dated this 8th day of February 2016

Entered in the Register on this 8th day of January 2016

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