AL KASSEM

v.

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

JUDGMENT

Counsel for Applicant:
Diab Tabari

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Hanan Hamad Al Kassem (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 accept her request to withdraw her resignation.

Facts

2. On 1 January 2014, the Applicant entered the service of UNRWA as a Human Resources Assistant “B”, Grade 9, at the Lebanon Field Office. Her fixed-term appointment was for one year until 31 December 2014 and was subsequently extended until 30 June 2015.

3. Three weeks before the expiration of her contract, by email dated 6 June 2015, the Applicant submitted her resignation to the Head of the Field Human Resources Office (“H/FHRO”) citing a heavy workload and “unappreciated work”.

4. By email dated 7 June 2015, the H/FHRO accepted the Applicant’s resignation.

5. A week later, by email dated 15 June 2015 to the Director of UNRWA Affairs, Lebanon (“DUA/L”), the Applicant requested the withdrawal of her 6 June 2015 resignation. The Applicant noted that she was under unusual psychological pressure when she resigned. Additionally, she requested to be transferred to a new department and placed under a new supervisor because she is “always accused of bad performance” and treated disrespectfully by her colleagues.

6. By email dated 19 June 2015 to the DUA/L, the Applicant reiterated her request to withdraw her resignation.

7. By email dated 19 June 2015, the DUA/L confirmed the Agency’s decision to accept her resignation.

8. By email dated 26 June 2015 to the H/FHRO, the Applicant again requested to withdraw her resignation and she further requested to return to her previous post if it was extended beyond 30 June 2015, and if this was not possible to be assigned to any other post that the H/FHRO found suitable.
9. By email dated 26 June 2015 to the Applicant, the H/FRHO rejected her request, citing that there is no provision in the Regulations and Rules and other administrative issuances with regard to withdrawal of resignation and that her separation from the Agency had already been processed.

10. By letter dated 3 August 2015 to the DUA/L, the Applicant requested review of the decision not to accept her request to withdraw her resignation, citing verbal abuse by the H/FHRO and “extreme pressure” by her colleagues which affected her health. The Applicant annexed a medical report dated 6 June 2015 from an Obstetrician/Gynaecologist (“OB/GYN”).

11. By letter dated 7 September 2015, the DUA/L confirmed the impugned decision, and noted that the medical report annexed by the Applicant on 3 August 2015 had never been mentioned or produced earlier although it had been issued on the same date as her resignation, i.e. on 6 June 2015.

12. On 30 October 2015, the Applicant submitted an application to the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 1 November 2015.

13. On 30 November 2015, the Respondent filed his reply.

**Applicant’s contentions**

14. The Applicant contends:

   i) Although not her supervisor, the H/FHRO interfered with her work, verbally abused her and “exerted extreme pressure (Mobbing) all along”;

   ii) The H/FHRO’s treatment of her was unethical, unacceptable and unworthy of a United Nations official;

   iii) She almost went into depression and therefore had to resign; and

   iv) “As legally nothing can be done in terms of extension of contract as voluntary resignation (under pressure occurred), [she] would still legally contest her
treatment and abuse and request morale and health damages from the Agency” [sic].

15. The Applicant requests the following relief:

i) “Compensation of $9000 for morale damages or equivalent to six months gross salary with provident fund entitlement (both Agency & My contribution) [sic]”; and

ii) “To have an equivalent post to G9 Step 2 as a compensation for the post that UNRWA forced me to lose without taking into considering the difficult circumstances that I was forced to work under [sic].”

Respondent’s contentions

16. The Respondent contends that no appealable administrative decision has been presented and that the application is not receivable.

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

Considerations

Main issue

Is there an appealable administrative decision?

18. The question to ask is whether an administrative decision, i.e. alleging the non-observance of the Applicant’s terms of appointment, has been made.

19. In order to address the question, it is important to look at the legal and administrative framework governing resignation.

20. Area Staff Regulation 9.2 provides:

   Staff members may resign from the Agency upon giving the Commissioner-General the notice required under the terms of their appointment.

21. With regard to what constitutes a resignation, Area Staff Rule 109.6 provides:
1. A staff member resigns who gives to the Agency a written notice of resignation as required under paragraphs 2 and 3 below. A resignation as here defined is always initiated by a staff member.

**NOTICE OF RESIGNATION**

2. A staff member who resigns shall give to the Agency:

   (A) Such period of notice as is provided for in his/her letter of appointment; or

   (B) If no such period of notice is specified therein, not less than 14 calendar days’ notice; or

   (C) Such other period of notice as the Commissioner-General may at his discretion accept.

3. Every notice of resignation shall contain a written statement of the staff member’s decision to resign, shall be signed by the staff member and shall specify the date on which he/she proposes that his/her resignation should take effect.

22. Finally, Area Staff Personnel Directive A/9 provides:

   […] Field Office Director in respect of Field staff, are authorized to act on behalf of the Commissioner-General and the Agency on matters arising from the implementation of Staff Rule 109.6; they may delegate these powers.

23. The Agency, as per the Area Staff Regulations, Rules and other relevant issuances, has no obligation to accept a request for withdrawal of resignation, once tendered, just as no right of rescission exists in the Applicant’s conditions of appointment as held by the United Nations Administrative Tribunal Judgement No. 991, *(Shamsi)* (2001), paragraph IV.

24. Noting that the Applicant’s resignation was a voluntary unilateral action which she initiated, the Tribunal is guided by the jurisprudence of the United Nations Appeals Tribunal (“UNAT”) in *Maghari* 2010-UNAT-039. This is a similar case where the Commissioner-General’s decision not to allow a staff member to withdraw his request for early voluntary retirement was upheld by the UNAT on the basis that the Agency’s refusal to allow a staff member to withdraw a unilateral, voluntary decision to resign did not give rise to an appealable administrative decision.

25. The Applicant is reminded that one does not create an appealable administrative decision by asking for a benefit that is not provided for in the relevant Area Staff Regulations
and Rules, and then complaining when it is denied. Rather, an appealable administrative decision arises in the application of the Staff Regulations and Rules and none provides for rescission of a resignation.

26. As it was the Applicant’s voluntary and unilateral decision to leave the Agency’s service by resignation, rather than the Respondent’s decision to terminate her appointment, the Tribunal finds that there is no appealable administrative decision in the case at bar. The Tribunal determines that the application is not receivable.

Other issues

27. In her letter dated 3 August 2015, two months after her resignation, the Applicant enclosed a medical report dated 6 June 2015, which states that she suffered from a medical condition as a result of psychological pressure. The report in full states:

Patient Hanan came to consult me suffering from acute bleeding and radiography and examination showed she suffered from psychological pressure.

The report bears the same date as the Applicant’s resignation. Yet the Applicant did not attach it to her letter of resignation or to any of her previous communications with the Agency. Had she indeed suffered from psychological pressure, as alleged, why did she not file the medical report during the two months that she had been attempting to withdraw her resignation? With no explanation by the Applicant as to why she filed it so late, the Tribunal does not give much weight to this piece of evidence.

28. With regard to the Applicant’s allegations of harassment, mobbing and verbal abuse by the H/FHRO, the Tribunal notes that the Applicant never submitted a formal complaint against the H/FHRO. Rather, the first time these accusations emerged was a month after the H/FHRO rejected the Applicant’s request to withdraw her resignation. Had the Applicant filed a complaint against the H/FHRO, the Agency would have launched an investigation. As no investigation was conducted for lack of a formal complaint, the alleged facts cannot be established. Accordingly, the Tribunal dismisses this contention.
Conclusion

29. Given all the above, the application is dismissed.

(Signed)

Judge Bana Barazi
Dated this 9th day of May 2016

Entered in the Register on this 9th day of May 2016

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman