AL HAMED

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Sa’ad Subhi Radwan Al Hamed (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 separate him from the Agency’s service for abandonment of post.

Facts

2. On 2 February 2013, the Applicant entered the service of the Agency as a Sanitation Labourer, Grade 1, Step 1, in Amman New Camp. The appointment was for a fixed-term expiring on 31 January 2016.

3. By email dated 14 September 2015, the Sanitation Foreman, Amman New Camp (“Sanitation Foreman”) informed the Area Sanitation Inspector, South Amman (“Sanitation Inspector”) that the Applicant had been absent from duty for a week during that month, without authorisation or explanation.

4. By email dated 20 September 2015, the Sanitation Foreman informed the Sanitation Inspector that the Applicant had not reported to duty since 8 September 2015, nor had he communicated with his supervisors despite attempts to contact him.

5. Following the Sanitation Foreman’s email of 20 September 2015, the Administrative Officer reported the Applicant’s absence to the Staff Services Officer, requesting that appropriate action be taken in light of unsuccessful attempts to communicate with the Applicant.

6. By registered letter dated 22 September 2015, the Director of UNRWA Operations, Jordan (“DUO/J”) wrote to the Applicant about his unauthorised absence from duty, advising him that unless he reported back to duty no later than 29 September 2015 and/or submitted a written explanation of his absence that would be acceptable to the Agency, he would be separated from the Agency’s service on grounds of abandonment of post as per Area Staff Rule 109.4.
7. By email dated 30 September 2015, the Staff Services Officer received confirmation that the Applicant had still not returned to duty.

8. By registered letter dated 30 September 2015, the DUO/J informed the Applicant of his separation from the Agency’s service for abandonment of post.

9. On 11 October 2015, the Applicant requested review of the DUO/J’s decision to separate him from the Agency’s service. The Agency did not respond.

10. On 24 December 2015, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”).

11. On 12 January 2016, the application was transmitted to the Respondent.

12. On 11 February 2016, the Respondent filed his reply.

13. By Order No. 016 (UNRWA/DT/2016) dated 29 February 2016, the Tribunal ordered the Respondent to submit an Arabic translation of his reply. The translated reply was transmitted to the Applicant on 10 March 2016.

14. On 10 March 2016, the Respondent filed the Arabic translation of his reply.

15. By Order No. 030 (UNRWA/DT/2016) dated 11 April 2016, the Tribunal ordered the Respondent to submit by the close of business 25 April 2016: (1) a copy of the Applicant’s attendance sheet; (2) evidence that the Applicant was routinely absent or late for duty; and (3) evidence that, prior to his separation, the Applicant had been warned for failing to report to duty.

16. On 25 April 2016, the Respondent submitted the attendance records of the Applicant from December 2014 to September 2015, except for the months of March and July 2015, and a record in which the Applicant confirmed his unauthorised absence from 3 to 6 August 2015. The records produced by the Respondent show that the Applicant had been absent from work without authorisation for 32 days between December 2014 and the end of August 2015.
17. By Order No. 042 (UNRWA/DT/2016) dated 16 May 2016, the Tribunal ordered the Respondent to produce further explanation and documentation by the close of business 23 May 2016, for the following:

   a. What specific “genuine efforts” were made to contact the Applicant during his absences from duty relevant to the present case;

   b. The actual date(s) on which the 22 September and 30 September 2015 letters were brought to the post office to be sent to the Applicant by registered mail;

   c. Whether any efforts were made to determine whether or not the Applicant had received the 22 September 2015 letter prior to sending the 30 September 2015 letter;

   d. The date the Agency learned that the Applicant’s address had changed; and whether any efforts were then made to deliver the letter(s) to the new address;

   e. Which letter(s) had been actually received by the Applicant and when;

   f. The date the request for decision review was received by the Agency; and

   g. Whether the Applicant had submitted to the Agency the medical reports contained in Annex 4, and if so, when.

18. On 23 May 2016, the Respondent responded to Order No. 042.

19. On 10 October 2016, a Notice of Hearing was sent to the parties, requesting that they confirm, by 27 October 2016, their intent to be present at the hearing. As the main purpose of the hearing was to give the Applicant one final opportunity to state his case, and the Applicant never confirmed his intent to be present at the hearing, the Tribunal cancelled the hearing, finding that the evidence contained in the case file was sufficient to make a determination.

**Applicant’s contentions**

20. The Applicant contends:

   i) His services were terminated without any prior notice or warning;
ii) He sent medical reports to justify his absence;

iii) He is in dire need of his job as he has to support a family of five and his parents; and

iv) He is ignorant of the Rules and Regulations.

21. The Applicant requests:

i) Reinstatement; and

ii) Financial compensation for the period starting from the date of his separation from service on 30 September 2015 to his reinstatement.

Respondent’s contentions

22. The Respondent contends:

i) The termination of the Applicant’s appointment was properly made; and

ii) The relief sought by the Applicant has no basis in fact or in law.

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

Considerations

Was the Respondent’s decision to separate the Applicant from the Agency’s service properly made?

24. It is important to examine whether the Agency relied on the applicable legal and administrative framework when deciding to separate the Applicant from service for abandonment of post.

25. Area Staff Regulation 9.1 provides:

The Commission-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.
26. Area Staff Rule 106.2, para. 6, provides:

NOTIFICATION OF ILLNESS OR INJURY

Staff members shall be responsible for informing their supervisors as soon as possible of absences due to illness or injury, and wherever practicable should report to their supervisors before absenting themselves.

27. Under Area Staff Rule 109.4:

ABANDONMENT OF POST

1. Where a staff member voluntarily absents himself/herself from duty and such absence neither has been authorised nor is subsequently authorised in accordance with these rules, then such staff member may be separated from Agency service by reason of abandonment of post as provided hereunder.

2. Where a staff member has absented himself/herself in the manner described in paragraph 1 above for three or more consecutive working days, the Commissioner-General may send to such staff member a letter informing him/her that unless, by a specified date (determined at the Commissioner-General’s discretion), he/she reports for duty or submits a written explanation of his/her absence which is acceptable to the Commissioner-General, he/she shall be deemed to have been separated from Agency service by reason of abandonment of post under the provisions of this rule.

3. In accordance with the provisions of paragraph 2 above, a staff member who fails to report for duty or to submit an acceptable written explanation by the date specified in the letter, shall, unless for exceptional reasons the Commissioner-General decides otherwise, be separated from Agency service under this rule, with effect from 2400 hours (local time) on the day immediately preceding the first day of his/her unauthorized absence.

(emphasis added)


25. The Director of Human Resources in case of Headquarters staff and Field Office Director in case of Field staff, are authorised to act on behalf of the Commissioner-General in implementation of Staff Rule 109.4.
26. Written communications to staff members pursuant to Paras 2 and 3 of Staff Rule 109.4 shall, whenever possible, be delivered by hand against receipt. Where such delivery proves unsuccessful, letters shall be sent, where possible, by registered mail.

27. Where a staff member returns to duty and submits an explanation for his absence which the Agency accepts, for exceptional reasons if so decided by the Commissioner-General, the staff member may be allowed to resume duty. The period of absence, if not exceptionally authorised retroactively, will be treated as leave without pay or unauthorised leave. If warranted by the circumstances, disciplinary proceedings under Personnel Directive No. A/10 may also be initiated.

29. In view of the above, the Tribunal finds that the DUO/J’s decision to separate the Applicant from the Agency’s service was made in accordance with the applicable Regulations and Rules and other relevant administrative issuances.

Have the facts on which the Respondent’s decision was based been reasonably established?

30. As evidenced in the record, the Applicant had been absent from 8 September 2015 to 30 September 2015, the majority of the time without giving any prior notice or obtaining authorisation by his superiors and without providing any explanation for his prolonged absence. Only in the few instances noted below did the Applicant provide after-the-fact excuses.

31. The Applicant does not contest the fact that he was absent from duty during the period in question; rather he attributes his absence to ill health as indicated in his request for decision review submitted on 11 October 2015. Indeed, the Applicant had provided, along with his request for decision review, six medical certificates for the dates 8, 12, 15, 19, 22 and 29 September 2015, respectively stating that he had suffered on these occasions from acute enteritis, acute enteritis and diarrhea, a germ in his stomach and severe diarrhea, acute pneumonitis, severe dizziness and otitis media, enteritis and diarrhea, in that order. The medical certificates are all signed by the same doctor, and each indicate that the Applicant was to rest for three days and that they were given to the Applicant upon his request. It is incomprehensible to the Tribunal why the Applicant would request
medical certificates and not give them to the Agency to explain his prolonged absence until after he was separated from service.

32. The record indicates that the Agency made efforts to contact him by telephone and by registered mail, to no avail. The Tribunal notes that the Applicant does not pretend to have attempted any communication with the Agency prior to 30 September 2015, to either obtain approval for his prolonged absence or explain his absence with medical certificates. Yet, a telephone call by the Applicant to the Agency would have helped his case. Presuming the Applicant was too ill to make the call himself, any member of his family or a friend could have made the call upon the Applicant’s request.

33. Given the evidence of the Applicant’s unauthorised absence from 8 to 30 September 2015, which is unchallenged by the Applicant, and the lack of any credible explanation by the Applicant for his prolonged absence in response to the request of the Agency prior to his separation from service, the Tribunal finds that the facts on which the Respondent based his decision to separate the Applicant for abandonment of post have been reasonably established.

Was the Respondent’s decision to separate the Applicant from the Agency’s service exercised arbitrarily, motivated by prejudice or flawed by procedural irregularities or error of law?

34. The Applicant claims that he was not given any prior notice or warning by the Agency that he was at risk of being separated on grounds of abandonment of post. The Tribunal notes that the DUO/J sent a letter to the Applicant on 22 September 2015, by registered mail:

1. It has been reported that you have failed to report to duty since 8 September 2015 for unknown reasons. Accordingly, please be informed that unless you report back to duty not later than 29 September 2015 and/or submit a written explanation of your absence acceptable to the Agency, you will be separated from the Agency’s service on grounds of abandonment of post, in accordance with the provisions of Area Staff Rule 109.4 effective the date of your absence on 8 September 2015.
2. Your attention is particularly drawn to the fact that if you are so terminated on the grounds of abandonment of post, the entire Agency contribution to your provident fund account will be forfeited by you.

35. This letter was not successfully delivered because the Agency was unaware that the Applicant had changed his address. Indeed, the Applicant did not report his change of residential address to the Human Resources department even though it was his responsibility. The Tribunal notes that, at the bottom of the appointment formality form, which the Applicant had signed on 10 December 2012, a disclosure confirming that “Any correspondence sent to me through the registered mail on the address indicated above shall be considered as duly received after five days at most from the date it is dispatched.”

36. The Tribunal finds that, unless the Applicant had officially informed the Agency of any change in his residential address (and there is no evidence of this), the address indicated by him on the form remained the correct one to be used by the Agency for all official correspondence and exchange. As for the Applicant’s telephone number, the Agency tried to call him repeatedly at the mobile number that he listed in the “annual verification slip” dated 25 May 2014, but received no response.

37. The Applicant’s claim that he did not receive the 22 September 2015 letter until 30 September 2015 is contradicted by the evidence. Indeed, on 28 September 2015, the Applicant appended his signature on the Agency’s mailroom registry record as proof of receipt of the 22 September 2015 letter. The Applicant had in his possession by then five of the six medical certificates and could easily have submitted them with an explanation for his absence from duty before the deadline to report to duty on 29 September 2015. The Applicant chose not to respond and not to report to duty and unfortunately must live with the consequences of his actions.

38. On 30 September 2015, the DUO/J duly followed up and sent the following letter by registered mail to the Applicant:

1. Further to my letter No. E/516330-3665 dated 22 September 2015, I regret to inform you that since you did not report back
to duty, you are hereby separated from the Agency’s service on grounds of abandonment of post under Staff Rule 109.4.

2. Your separation is considered effective the date of your absence on 8 September 2015, i.e. your last day in the Agency’s service will be considered 7 September 2015. A Personnel Action Form to this effect is being issued by the Human Resources Department.

The Tribunal finds that the Respondent diligently gave prior notice to the Applicant on 22 September 2015, although he had no obligation to do so, as Rule 109.4(2) stipulates that “[t]he Commissioner-General may send … a letter” (emphasis added). The Respondent also offered the Applicant a chance to explain the reason for his prolonged absence and to report to duty. When the Applicant chose not to respond and thus failed in his obligations as a staff member despite having received in person the letter of 22 September 2015 prior to the deadline of 29 September 2015, the Respondent properly exercised his discretion and decided not to resume the Applicant to duty. The Tribunal does not find any arbitrariness, bias, error of law or procedural irregularity in the Respondent’s decision to separate the Applicant from the Agency’s service on grounds of abandonment of post.

Other claims by the Applicant

39. The Applicant claims that he provided an explanation for his unauthorised absence when he submitted six medical certificates, referred to in paragraph 32 above. The Applicant is reminded that he provided these certificates post facto – after the deadline of 29 September – although five of the six certificates were dated prior to that deadline. The certificates were provided by the Applicant to the Respondent only on 11 October 2015 together with his request for decision review.

40. The Applicant contends that he is ignorant of the Regulations and Rules. This Tribunal, drawing from the jurisprudence of the United Nations Appeals Tribunal, has consistently reminded applicants that ignorance of the Regulations and Rules is no excuse because it is the duty of all staff members to be familiar with the Regulations and Rules that govern them. The Applicant is not as ignorant
as he pretends to be because he knew about requesting decision review, and he knew about filing an application.

41. The Applicant claims that he is in dire need of his job because he has a family to feed. The Tribunal does not find his claim credible; if indeed he was in dire need of his job, he would not have shown a complete disregard for his professional obligations and utter negligence, if not indifference, in providing an explanation for his prolonged unauthorised absence from duty.

Is there any legal basis for the remedies sought by the Applicant?

42. The Applicant requests to be reinstated and to receive financial compensation for the period starting from his separation from service to his reinstatement.

43. Having determined that the facts on which the Respondent’s decision was based have been reasonably established, and that the Respondent’s discretionary authority was not tainted by evidence of procedural irregularity, prejudice or other extraneous factors or error of law, the Tribunal finds that the Applicant’s request for relief has no basis in fact or in law.

Conclusion

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

(Signed)  
Judge Bana Barazi  
Dated this 6th day of November 2016

Entered in the Register on this 6th day of November 2016

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