HABASH

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 Abdallah Mohammad Habash (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 on medical grounds.

Facts

2. Effective 1 September 2004, the Applicant was employed by the Agency as a Teacher (English) at Amari Camp Basic Boys School, Jerusalem Area, Grade 6, Step 1. After several promotions and transfers, effective 1 November 2011, the Applicant was transferred as a Teacher (Vocational Education) to Qatanneh Basic Girls School, Jerusalem Area, Grade 10.

3. At the material time of the application, the Applicant was on a three-year contract as an English Language Teacher at the Qalandia Boys Schools, Jerusalem Area, Grade 10, Step 6.

4. By email to the Chief Field Health Programme (“C/FHP”) dated 13 November 2013, the Administrative Officer of the Education Department at the West Bank Field Office recommended referral of the Applicant to a medical board.

5. On 19 November 2013, following a medical evaluation of the Applicant, the Senior Medical Officer, Qalandia Health Centre also recommended referral of the Applicant to a medical board to evaluate and assess his medical situation. The recommendation was endorsed by C/FHP and approved by the Field Human Resources Officer (“FHRO”) on 20 November 2013.

6. On 14 February 2014, a medical board was convened and issued its report on 12 March 2014, concluding that the Applicant was unfit to perform his duties as a Teacher at Qalandia Boys Schools. The C/FHP approved the recommendation on 29 March 2014.
7. By letter dated 9 April 2014, the FHRO informed the Applicant of the findings of the medical board and noted that his appointment would be terminated according to the provision of Staff Regulation 9.1, effective 22 May 2014.

8. On 7 December 2014, the Applicant sent an email to the Director of UNRWA Operations, West Bank (“DUO/WB”) seeking his reinstatement. On 22 December 2014, the Applicant sent another email to the Deputy Director of UNRWA Operations, West Bank (“D/DUO/WB”) questioning whether he could appeal against the conclusions of the medical board.

9. On 12 July 2016, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 19 July 2016.

10. On 18 August 2016, the Respondent filed his reply. The reply was transmitted to the Applicant on 21 August 2016.

11. On 1 September 2016, the Respondent filed a “Motion for Extension of Time to Translate a Reply.” The motion was transmitted to the Applicant on 4 September 2016.

12. On 19 September 2016, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

13. The Applicant contends that he requested review of the decision to terminate his appointment in May 2014. The Applicant also asserts that he received a verbal response and he was told not to file an application before the Tribunal.

14. The Applicant requests to be reinstated.
Respondent’s contention

15. The Respondent contends that the application is not receivable as the Applicant failed to submit a request for decision review of the decision to terminate his appointment within the specified deadlines.

Considerations

16. The Applicant contests the decision to terminate his appointment. However, the Respondent submits that the application is not receivable as the Applicant has failed to submit a request for decision review.

17. Area Staff Rule 111.2 provides, in relevant part:

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 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

18. Article 8, paragraph 3, of the Statute of the Tribunal plainly states that “[t]he Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review”.

19. The United Nations Appeals Tribunal (“UNAT”) held in Ajdini et al. 2011-UNAT-108, paragraph 23, 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.
20. The Applicant does not contest that he did not formally submit a written request for review of the decision to terminate his appointment, of which he was informed on 9 April 2014.

21. Assuming that the two emails which the Applicant sent on 7 December 2014 and on 22 December 2014, respectively to the DUO/WB and to the D/DUO/WB were requests for decision review, these requests were made outside the statutory time limit as they have been submitted more than 60 days after the Applicant has been notified of the decision to terminate his appointment.

22. The Applicant claims that he was not correctly informed of his rights to appeal the contested decision. Assuming, arguendo, that the Applicant’s allegation in this respect is substantiated, he does not claim that he was in fact misinformed by a competent authority of the Agency, as only in that specific situation, it would entail the legal responsibility of the Agency.

23. Considering that the Applicant has not submitted a written request for decision review as required under Area Staff Rule 111.2(1) prior to filing an application before the Tribunal, and that the Tribunal has no jurisdiction to waive this requirement, the Tribunal finds that the application is not receivable.

Conclusion

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

(Signed)

Judge Jean-François Cousin

Dated this 2\textsuperscript{nd} day of May 2017

Entered in the Register on this 2\textsuperscript{nd} day of May 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman