Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

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

JUDGMENT

Counsel for Applicant: Haneen Imad

Counsel for Respondent: Rachel Evers (DLA)
Introduction

1. This is an application by Jamal Barakat (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“the Agency”), also known as UNRWA (the “Respondent”), not to consider his claim for work injury, upon retirement.

Facts

2. On 20 December 2001, the Applicant entered the service of the Agency as a Teacher at Baqa’a Preparatory Boys School, in Jordan.

3. By letter dated 26 January 2014, the Human Resources Services Officer (“HRSO”) informed the Applicant that he would reach retirement age on 15 May 2014, and that, effective 15 May 2014, he would be put on retirement at the age of 60, in compliance with Area Staff Rule 109.2.

4. By Inter-Office Memorandum dated 17 February 2014, the Applicant’s request to be retained in service beyond the official age of retirement was transmitted to the HRSO.

5. On 7 April 2014, the Applicant signed a “Declaration and Undertaking” form on his health status, asserting that he suffers from a heart condition, short-sightedness and high blood pressure.

6. By letter dated 23 April 2014, the Applicant’s contract was extended for two years until 15 May 2016.

7. On 15 May 2016, the Applicant was separated from the Agency on retirement.

8. On 16 May 2016, the Applicant signed a “Waiver of Medical Examination” form (“Waiver”), declining to submit to the medical examination required by the Agency and waiving all claims against the Agency in respect of sickness or health disability. The Waiver was drafted in English and Arabic.

9. Towards the end of his service, the Applicant was suffering from severe lower back pain and leg cramps, and he consulted a specialist. The Applicant informed the concerned personnel in the Education Office in Irbid about his medical condition and
was told that he was not entitled to any benefit because there was no record of his medical history at the Irbid Clinic.

10. On 20 November 2016, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). On 24 November 2016, the application was transmitted to the Respondent.

11. On 22 December 2016, the Respondent submitted his reply to the Tribunal. On the same day, it was transmitted to the Applicant.

12. On 10 January 2017, the Respondent filed a motion requesting the Tribunal to validate the late submission of the Arabic translation of his reply, attaching the translation to the motion.

13. On 11 January 2017, the Tribunal implicitly granted the motion of the Respondent by transmitting it, together with the Arabic translation of the reply, to the Applicant.

**Applicant’s contentions**

14. The Applicant contends:

   i) The Respondent’s decision is in breach of the Jordanian Labour Law;
   
   and

   ii) The Respondent’s decision is without merits.

15. The Applicant requests compensation for his work injuries, which are to be evaluated by a medical committee or a medical specialist in accordance with the procedure followed in the Jordanian public sector.

**Respondent’s contentions**

16. The Respondent contends that the application is not receivable because the Applicant failed to comply with the requirement to submit a written request for decision review before filing an application with the Tribunal.
17. The Respondent requests the Tribunal to dismiss the application.

Considerations

18. The Applicant challenges the decision not to consider his claim for work injury upon retirement, and the Respondent submits that the application is not receivable because the Applicant has failed to request decision review.

19. According to Article 5 of the Rules of Procedure of the Tribunal, the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. The crucial question in this case – whether the application is receivable – is such a matter of law.

20. As per Article 8 of the Statute of the Tribunal:

1. An application shall be receivable if:

   […]

   (c) An applicant has previously submitted the contested administrative decision for decision review; […]

21. Area Staff Rule 111.2 governing decision review, 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; and

   […]

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.

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

Page 4 of 6
23. The United Nations Appeals Tribunal (“UNAT”) has held in *Ajdini et al. 2011-UNAT-108*, at paragraph 23:

[...] 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. The UNAT has affirmed that the United Nations Dispute Tribunal (“UNDT”) does not have jurisdiction *ratione materiae* over complaints that were not the subject of an administrative review or management evaluation (*Crichlow 2010-UNAT-035*) and that this preliminary step must be exhausted before the jurisdiction of the UNDT can be invoked (*Planas 2010-UNAT-049*).

25. The Tribunal’s provisions in Area Staff Rule 111.2 and Area Staff Regulation 11.3, Article 8, paragraph (c) are similar to the UNDT’s: an applicant must submit a request for decision review as a prerequisite first step in contesting an administrative decision. The jurisdiction of the UNAT is binding on this Tribunal, and therefore, without a request for decision review, this Tribunal has no jurisdiction *ratione materiae* over the application in the present case.

26. The record provides no evidence of a written request for decision review by the Applicant in any way, shape or form. Furthermore, at part IV of the application relating to decision review:

- In his application, the Applicant wrote “No” next to the question “Have you requested a decision review of the challenged decision?”;
- The Applicant did not provide a date as to the question: if yes, when (date);
- The Applicant did not check Yes or No to the question: have you received a response; and
- The Applicant did not provide a date as to the question: if yes, the date of the response.

27. The Applicant merely wrote: “I tried to call 065809100 but to no avail” with no indication as to whom the call was addressed. The Applicant also stated that, before retiring, he had requested the Education Department to consider his back pain as related to his work as a teacher, and the Department declined to do so.
28. The Applicant and his counsel do not seem to be aware that compliance with the Area Staff Regulations and Rules governing the Agency staff is essential to their case. If the Applicant contends that a mere telephone call - and he has not specified whose telephone number it was - is considered as a request for decision review, he and his counsel are reminded to read the relevant articles of Area Staff Regulations and Rules, referred to in paragraph 25 above. After all, the Applicant is a teacher and his counsel is a lawyer and reading the applicable Regulations and Rules should not be beyond their comprehension. Presuming the Applicant had verbally requested a review of the contested decision, the Tribunal considers that a mere verbal request does not amount to compliance with the requirement of Area Staff Rule 111.2, which provides for the compulsory submission of a written request for decision review.

29. In light of the above, the Tribunal finds that the Applicant has not requested at any time administrative review of the contested decision as required under Area Staff Rule 111.2 prior to submitting an application to the Tribunal.

30. Considering that the Tribunal has no jurisdiction to waive the requirement of a prior request for administrative review, the Tribunal finds that the application is not receivable.

Considerations

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

(Signed)
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Judge Bana Barazi
Dated this 23rd day of May 2017

Entered in the Register on this 23rd day of May 2017

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