Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

EL MALAWANI

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 Sabri El Malawani (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 select him for the post of Assistant Mental Health Supervisor.

Facts

2. Effective 25 June 2006, the Applicant entered service with UNRWA as a Psychosocial Counsellor, Grade 10, Step 1, in Khan Younis, Gaza, on a fixed-term appointment.

3. On 3 February 2016, the Agency advertised, for internal staff only, a vacancy announcement for the position of Assistant Mental Health Supervisor (“AMHS”), Grade 12, at the Community Mental Health Programme, Gaza Field Office.

4. On 30 June 2016, following the first round of interviews, the Applicant was verbally informed that he had not been selected for the post of AMHS.

5. On 25 July 2016, the Applicant filed a complaint about the selection process.

6. On 6 August 2016, the Applicant submitted a request for decision review to the Director of UNRWA Operations, Gaza Field Office (“DUO/GFO”).

7. By letter dated 22 August 2016, the Head, Field Human Resources Office (“H/FHRO”), responded to the Applicant’s complaint.

8. On 11 January 2017, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 22 January 2017.

9. On 17 February 2017, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30-day time limit set out in Article 6(1) of the
Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on 19 February 2017.

10. By Order No. 034 (UNRWA/DT/2017) dated 2 March 2017, the Tribunal granted the Respondent’s request for an extension of time.

11. On 16 March 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 19 March 2017.

12. On 29 March 2017, the Respondent filed a “Motion for Extension of Time to Translate the Reply”. The motion was transmitted to the Applicant on the same date.

13. By Order No. 056 (UNRWA/DT/2017) dated 9 April 2017, the Tribunal granted the Respondent’s request.

14. On 20 April 2017, the Respondent submitted the Arabic translation of his reply. The Arabic translation of the reply was transmitted to the Applicant on the same date.

15. On 27 April 2017, the Applicant filed a “Motion to Request Leave of the Tribunal to File Observations on the Respondent’s Reply”. The Applicant’s observations were also attached to his motion. Both the Applicant’s motion and his observations were transmitted to the Respondent on the same date.

**Applicant’s contentions**

16. The Applicant contends:

   i) His performance during the interview was excellent;

   ii) The selection process was not transparent;

   iii) The Interview Panel was not impartial; and

   iv) There was deliberate procrastination in informing the Applicant of the legal procedure for contesting the selection process.
17. The Applicant requests the establishment of a neutral committee to review the selection process.

**Respondent’s contentions**

18. The Respondent contends:

i) The application is time-barred;

ii) In the event that the Tribunal counts the letter from the H/FHRO as a response to the Applicant’s request for decision review, the application is also time-barred. If the Tribunal finds that the Agency did not respond to the Applicant’s request for decision review, the application is still time-barred; and

iii) The application must be rejected as not receivable *ratione temporis* by the Tribunal.

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

**Considerations**

20. The Respondent claims that the application is time-barred as the Applicant submitted his request for decision review on 6 August 2016, and he filed his application with the Tribunal on 11 January 2017.

21. 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[..]
22. Article 8(1)(d) of the Statute of the UNRWA Dispute Tribunal provides that the Tribunal is competent to hear and pass Judgment on an application if the application is filed within the following deadlines:

(ii) Within 90 calendar days of the expiry of the relevant response period for the decision review if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to decision review[...]

23. It follows from the above provisions that an application must be filed no later than 120 days from the date of the decision review request, when there is no response to the decision review request. This was also confirmed in the United Nations Appeals Tribunal’s recent Judgment of Al-Dawoud 2016-UNAT-664, paragraph 20.

24. It is not contested that the Applicant submitted his request for decision review on 6 August 2016. Subsequently, even though there were some exchanges between the Applicant and the Agency about his complaint, the Agency did not provide a response to the Applicant’s request for decision review. Therefore, the time for the Applicant to file an application before this Tribunal had expired 120 days after 6 August 2016, i.e. on 4 December 2016. As the Applicant filed his application only on 11 January 2017, his application is not receivable *ratione temporis*.

**Conclusion**

25. For the reason provided above, the application is dismissed.

(Signed)

Judge Jean-François Cousin
Dated this 21\textsuperscript{st} day of September 2017

Entered in the Register on this 21\textsuperscript{st} day of September 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman