MADI

v.

COMMISSIONER-GENERAL OF THE
UNITED NATIONS RELIEF AND WORKS
AGENCY FOR PALESTINE REFUGEES
IN THE NEAR EAST

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Ibrahim Mohammed Madi (the “Applicant”) against the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to deny 1) his request for special leave without pay; and 2) his request for early voluntary retirement.

Facts

2. On 21 February 1989, the Applicant entered the service of the Agency as a Procurement Quantity Surveying Assistant, in the Relief Services Department, Grade 10, in the Gaza Field Office (“GFO”). At the time material to the application, the Applicant was working as a Construction Engineer, Grade 14, Step 4, in the GFO.

3. On 14 June 2012, the Respondent acceded to a request for release of the Applicant to the African Union - United Nations Mission in Darfur (“UNAMID”), for the position of Engineering Technician on a six-month basis.

4. Following UNRWA’s agreement with UNAMID, the Applicant was placed on Special Leave Without Pay (SLWOP) from 1 July to 31 December 2012. His SLWOP was extended for another six months, from 1 January to 26 June 2013. Upon a further request for release of UNRWA staff members on a temporary basis with UNAMID, the Applicant’s SLWOP was extended to 25 December 2013.

5. By email dated 9 December 2013 to the Department of Human Resources, the Applicant requested an extension of his SLWOP to 27 June 2014.

6. By letter dated 11 December 2013, the Head Field Human Resources Office (“H/FHRO”) explained to the Applicant the conditions and consequences of the extension of his SLWOP. Upon the Applicant’s acceptance of those terms and conditions, the Applicant’s request for extension was granted until 27 June 2014.
The Applicant’s SLWOP was further extended for another two years until the end of June 2016.

7. By email dated 23 June 2016 to the Director of UNRWA Operations, Gaza (“DUO/G”), the Applicant requested another extension of his SLWOP for a period of one year up to 30 June 2017, explaining that he had been offered the international post of Contracts Management Officer at the P-3 level with UNAMID.

8. By email dated 27 June 2016 to the Applicant, the Human Resources Services Officer (“HRSO”) in Gaza informed the Applicant that he had exceeded the leave duration limit and that his request for an extension of SLWOP was refused.

9. By email dated 28 June 2016 to the HRSO, the Applicant requested Early Voluntary Retirement (“EVR”).

10. By email dated 19 July 2016, the HRSO informed the Applicant that his request for EVR had been denied by Headquarters as they alone have the authority to decide on EVR requests. By email to the HRSO the same day, the Applicant requested SLWOP for three more months so as to submit another EVR request to be included in the next EVR round ending 30 September 2016.

11. By email dated 2 August 2016, the HRSO informed the Applicant that his request for three more months of SLWOP, i.e. up to 30 September 2016, had been approved in order to enable him to apply for the next EVR round.

12. By email dated 3 August 2016, the Applicant applied for the EVR round of the third quarter.

13. By email dated 20 August 2016, the Director of Human Resources (“DHR”) advised the Field Office Directors and other managers and officers concerned that no EVR applications were to be processed until further notice.

14. On 21 September 2016, the Administrative Officer in the Infrastructure & Camp Improvement Programme (“ICIP”) in Gaza sent an email to the Applicant
informing him that his EVR application had been denied and directing his attention to the DHR’s email of 20 August 2016.

15. By email dated 23 September 2016, the DHR informed the Applicant that his request for EVR could not be supported at that time due to the lack of funding and that he (the DHR) was waiting for a recommendation from the GFO on the Applicant’s request for a further year of SLWOP. The DHR also informed the Applicant that he would be “happy to support and advocate on [his] behalf for a possible transfer to the UN” recognising how well regarded the Applicant was by them.

16. By email dated 24 September 2016, the DHR denied the Applicant’s request for a further year of SLWOP and encouraged the Applicant “to contact [name removed] the OiC HR GFO to discuss [his] options”.

17. By email dated 25 September 2016, the Applicant submitted a request for review of the decision rejecting his EVR request.

18. In an email to the Applicant dated 25 September 2016, the DHR stressed that the consideration of his EVR applications had been undertaken within the Agency’s current policy, which has been consistently applied across the Agency. He again encouraged the Applicant to contact the OiC HR GFO “urgently” to “discuss options in regard to [his] situation”.

19. By letter dated 26 September 2016, the Applicant was informed that, as his SLWOP was due to expire on 30 September 2016, he was therefore expected to report to his duty station by 1 October 2016.

20. By letter dated 10 October 2016, the H/FHRO informed the Applicant that he was considered to be on unauthorized absence without pay as of 1 October 2016, and that unless he returned to his duty station in Gaza by 1 November 2016 or tended his resignation, he could be separated from service for abandonment of post.

21. By letter dated 18 October 2016 to the H/FHRO, the Applicant explained that he was abroad and could not report to Gaza, due to travel restrictions.
22. By letter dated 20 October 2016, the Applicant was informed that his request for EVR based on humanitarian grounds could not be approved.

23. By email dated 30 October 2016 to the H/FHRO, the Applicant tended his resignation effective the same day.

24. On 1 November 2016, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 6 November 2016.

25. By letter dated 7 November 2016, the H/FHRO informed the Applicant that his resignation had been accepted effective close of business on 31 October 2016, adding:

You are kindly requested to approach the Human Resources Department after 10 December 2016 to fill out the necessary forms regarding your choice to receive/defer all or part of your separation benefits in accordance with the established UNRWA procedures.

26. By email dated 8 November 2016, the Applicant transmitted to the Tribunal an email that he had received on 7 November 2016 from the Administrative Officer in the ICIP in Gaza. The email from the ICIP had forwarded the letter dated 20 October 2016 regarding the denial of the Applicant’s EVR request.

27. On 10 November 2016, the Applicant sent an email to the Tribunal, in which he referenced another email that he had received from the Administrative Officer in the ICIP, stating that the ICIP had received the 20 October 2016 letter on 7 November 2016.

28. The Respondent received the Applicant’s emails dated 8 and 10 November 2016, along with the attachments to those emails.

29. On 6 December 2016, the Respondent filed his reply. It was transmitted to the Applicant on 7 December 2016.
Applicant’s contentions

30. The Applicant contends:

   i) He has the right to EVR as per Area Staff Rule 109.2;

   ii) The DHR’s decision to reject his request for EVR is without merit;

   iii) His request for EVR was not considered fairly;

   iv) The decision to reject his request for EVR lacks clarity on how the concerned provision was observed or the basis for the decision;

   v) The letter of 20 October 2016, which he received on 7 November 2016, is misleading because he did not request EVR based on humanitarian grounds; and

   vi) The manner in which his SLWOP and EVR requests were handled leads the Applicant to the conclusion that the Respondent’s intention was to deprive him of 21 years of service benefits.

31. The Applicant requests:

   i) Approval of his EVR request by the Respondent; and

   ii) Approval of his retirements benefits despite his resignation.

Respondent’s contentions

32. The Respondent contends that:

   i) The decision to reject the Applicant’s request for EVR was properly made;

   ii) The Applicant’s request for EVR was treated fairly;
iii) The decision to refuse the Applicant’s request for a fifth year of SLWOP was properly made;

iv) There was no ill motivation behind the decision to reject the Applicant’s request for SLWOP; and

v) The relief sought by the Applicant has no basis.

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

Considerations

Preliminary Issue

34. As mentioned in paragraphs 26-27, on 8 November 2016, the Applicant filed with the Tribunal the 20 October 2016 letter, together with the email of the Administrative Officer, ICIP dated 7 November 2016. On 10 November 2016, he sent a second email to the Tribunal, which referenced another email he had received from the Administrative Officer, ICIP. The Tribunal will consider these documents as a supplemental annex to the application.

Main Issues

35. The Applicant contests the decisions to deny his requests for SLWOP and EVR. The Tribunal will examine the SLWOP issue first, and the EVR issue second.

SLWOP

36. In relevant part, Area Staff Personnel Directive No. A/5 (Rev. 5) (“PD A/5”) provides:

1.4.10. Work with Other Organizations.

(A) Special leave without pay may be approved to allow staff members to work with other UN, non-UN organizations, taking into consideration the following factors:
(i) The work experience will likely enhance the staff member’s performance with the Agency;

(ii) The work experience will likely contribute to the staff member’s career development;

(iii) The operational needs of the Department/Field concerned will be unduly affected by the staff member’s absence.

[...]

(D) The period of release under the provisions of this Directive is limited to a maximum of one year. A second year of Special Leave Without Pay (SLWOP) if requested by the staff member may be considered by the Agency. There is no right to SLWOP, and where SLWOP is granted for an initial year, there is no automatic entitlement to an extension of SLWOP for a second year.

37. It is clear from the above that the maximum duration of SLWOP is one year, with the possibility of an extension for a second year. As evidenced in the record, the Applicant was not only given a second year extension, but also a third then a fourth, bringing the total to four years of SLWOP. In addition, three months of SLWOP, which were granted to allow the Applicant to apply for the next round of EVR, must be added to the four years.

38. When the Applicant requested an extension of his SLWOP in December 2013, the H/FHRO indicated to the Applicant, *inter alia*:

> If you opt by 1 July 2014 to return to UNRWA, you will be considered as a redundant staff member and the Agency will look for a vacancy suitable for your qualifications. This post might be similar to your current grade 14 or vacancies of lower grades than your current post. If an alternative suitable post cannot be found, you will be terminated from the Agency’s service on redundancy basis under Area Staff Rule 109.1.

The Tribunal finds that the Respondent acted responsibly and transparently by explaining the applicable options to the Applicant. However, the Applicant preferred to keep working for UNAMID, thus accepting the consequences of his choice.

39. On 14 April 2016, the Applicant offered his resignation to UNAMID effective 18 May 2016. The reason was that he had entered a competition and
consequently was offered by UNAMID the international post of Contracts Management Officer at the P-3 level, a position the Applicant considered as “a stable one and very promising”. In order to accept the international position, the Applicant had to relinquish the temporary appointment with UNAMID, and the Applicant did just that. However, in June 2016, the Applicant, wanting to keep his ties to UNRWA, thus having it both ways, requested an extension of his SLWOP from UNRWA for a fifth year.

40. The Applicant’s request was denied. The Tribunal finds that the Respondent acted in a transparent manner with the Applicant when the HRSO explained by email:

[…] I would like to advise you that you have already been on prolonged SLWOP since 1 July 2012 and that you have already exceeded the leave duration limit provided under the subject personnel directive and that was made on an exceptional basis. Hence, I regret that it was not possible to extend your SLWOP any further.

Adding and offering the following:

As you have no lien to the post, I would ask that you kindly let me know as soon as possible if you would like to return to work with UNRWA so that HR can find you a suitable post.

What was the Applicant’s response? He expressed his desire to leave his employment with UNRWA by applying for EVR, rather than resigning, in order to preserve his retirement benefits, as he had no intention of returning to UNRWA. Again, the Respondent acted in a reasonable manner and granted the Applicant three additional months of SLWOP in order to allow him to apply for EVR in the next round.

41. On 24 September 2016, the DHR responded to the Applicant’s request for an extension of his SLWOP for a fifth year:

Following my consultations with the Field Director GFO today, I regret to advise that your SLWOP application cannot be supported. In making this decision, I note that you have been on continuous SLWOP since 1 July 2012 (in excess of four years) and you have been contracted by the UN till end of 2017, which would take your time away from UNRWA to five years.
In this email, the DHR added that the staff in Syria, with the support of the Area Staff Union, had been accorded an upper limit of three years of SLWOP because of the special conditions prevailing in that war ravaged land. The Tribunal notes that the three-year maximum period of SLWOP given to staff in Syria is still less than what was granted to the Applicant.

42. The Tribunal finds that the Respondent was flexible and understanding in granting extensions to the Applicant much beyond the maximum allowed by PD A/5. Such flexibility and understanding are inconsistent with the Applicant’s allegation that the Respondent intended to force him to resign or abandon his post. Moreover, the facts are plain and simple. The Applicant was offered a P-3 post elsewhere and intended to accept that post and leave the employ of UNRWA. UNRWA was not under any obligation to extend his SLWOP, and whatever financial consequences resulted were due solely to the Applicant’s own decision – not the decision of the Agency.

43. The Tribunal finds that there is no evidence on the part of the Respondent of ill will towards the Applicant in the decision not to grant the Applicant’s request for an extension of SWLOP for a fifth year. It is unfortunate that the Applicant has chosen to focus on the refusal by the Respondent to grant him a fifth year of SLWOP while at the same time disregarding the four years of SLWOP accorded to him so he could keep working with UNAMID at an international P-3 level. This view of the circumstances is revealing of the Applicant’s concern only for himself and not for the welfare of the Agency.

44. Allegations of bias or intent to harm are of a serious nature and should not be made frivolously or without supporting evidence. The Applicant has not provided any evidence that the Respondent’s decision to reject the extension of his SLWOP for a fifth year was biased or made with the intent to cause him prejudice, force him to resign, separate him for abandonment of post or deprive him of his service benefits.
EVR

- Applicable regulatory framework

45. Under Article 1 of Area Staff Rule 109.2:

A staff member is retired on grounds of age when the Agency requires him/her to leave Agency employment on account of his/her age, as provided hereunder.

46. Article 6 of Area Staff Rule 109.2 provides:

For the purposes of this rule, “qualifying service” shall be defined as the total period of continuous employment by the Agency as an area staff member, provided that it may also include other periods of continuous service as an area staff member, or as an employee in the “A”, “X”, or “P” category, which immediately preceded such qualifying service, and provided further that qualifying service shall not include any period of special leave with partial pay or without pay of one month’s duration or more.

47. As per Article 8 of Area Staff Rule 109.2:

A staff member may leave the Agency’s service by early voluntary retirement (EVR):

(A) (i) On or after his/her 50th birthday, if he/she has at least 10 years of qualifying service, as defined under paragraph 6 above; or

(A) (ii) After his/her sixtieth (60th) birthday, if he/she has at least 10 years of qualifying service, as defined under paragraph 6 above, for staff members whose service has been extended beyond the official age of retirement upon a staff member’s request under sub-paragraphs 4 (B) or (C) of this Rule.

(B) On or after he/she has completed 25 years of qualifying service, as defined under paragraph 6 above; or

(C) On or after his/her 45th birthday and before his/her 50th birthday if he/she has at least 10 years of qualifying service, as defined under paragraph 6 above;

(D) After he/she has completed between 20 and 24 years of qualifying service, as defined under paragraph 6 above.

48. For the implementation of Area Staff Rule 109.2, Area Staff Personnel Directive A/9 (Rev. 10) (“PD A/9”), provides in relevant part:
12. EVR applications under sub-paragraphs 8(A) and (B) of Area Staff Rule 109.2 have the highest priority among EVR applications. These applications will be considered in descending order from the highest combination of years of age and years of service. EVR applications will normally be reviewed and approved on a quarterly basis.

13. EVR applications under sub-paragraphs (C) and (D) of Area Staff Rule 109.2, will be considered in descending order from applications with the highest combination of years of age and years of service. The Director of Human Resources may postpone the approval of EVR applications under sub-paragraphs (C) and (D) to the end of the financial year in order to assess available funds and to meet unforeseeable demands under sub-paragraph (A) and (B) of Area Staff Rule 109.2 and paragraph 15 below. Unsuccessful applicants may submit applications for EVR in subsequent years.

[...]

15. At the discretion of the Director of Human Resources, applications for EVR may be exceptionally approved for humanitarian reasons, in cases of redundancy and in the interest of the Agency, subject to applicants meeting the EVR requirements under paragraph 8 of Area Staff Rule 109.2.

16. The approval of EVR applications is subject to a financial limit established in the form of an annual cap by the Commissioner-General.

49. Furthermore, Area Staff Circular No. A/05/2015 (“ASC No. A/05/2015”) dated 25 February 2015 recommends the following criteria when approving EVR requests:

- For all categories of staff members: the availability of funds, humanitarian grounds and interest of the Agency;
- For category “A” staff members, priority is given first to the age of the staff member and second, to years of service.

  - Were the reasons for denial of EVR legitimate and the decision a proper exercise of discretionary authority?

50. At the outset, the Tribunal finds that the Applicant made two requests for EVR, both of which were denied. However, the only decision that is before the Tribunal is the denial of the Applicant’s second request for EVR made on 3
August 2016, which had been received by the Applicant on 23 September 2016, from the DHR, and which was the subject of a request for decision review dated 25 September 2016. With regard to the Applicant’s first request for EVR made on 28 June 2016, he was informed of the decision denying his request on 19 July 2016, and he did not make a request for decision review within 60 days as required under Area Staff Rule 111.2. Therefore, the Tribunal can only consider the denial of his second request for EVR.

51. The Tribunal notes that the Agency issued IOM HR APS/M/4 on 14 February 2016, titled “Early Voluntary Retirement (EVR) Budget Allocation Strategy 2016”, setting the EVR budget for the year 2016 at USD2,000,000. The Applicant was eligible for EVR under Staff Rule 109.2, paragraph 8(A) as he was then over 50 years of age and had completed over 10 years of qualifying service with the Agency. However, the approval of his EVR request was subject to a financial limit established in the form of an annual cap set by the Commissioner-General, as provided by PD A/9.

52. The Applicant correctly referred to the applicable provisions and criteria set out in Area Staff Rule 109.2 with regard to his age and years of service. However, the Applicant must be made aware of the fact that his eligibility for EVR is no guarantee that his EVR request will be granted. It is not an unconditional right, as the Applicant seems to think. By further considering humanitarian grounds in a letter sent to the Applicant on 20 October 2016, although the Applicant had not availed himself of this option, the Respondent was not attempting to disguise his alleged ill intent as the Applicant claims; rather the Respondent was implementing the provisions of ASC No. A/05/2015. The Respondent reserves the right, along budgetary constraints, to accept the requests of staff members who best fulfil the additional criteria set out in ASC No. A/05/2015.

53. Examining the record, the Tribunal finds that, in deciding to deny the Applicant’s request for EVR, the Respondent duly considered and evaluated the eligibility of the Applicant against the criteria set out in the Rules and other relevant administrative issuances.
54. As held by the United Nations Appeals Tribunal (the “UNAT”) in *Abu Hamda* 2010-UNAT-022, at paragraph 37:

    […] As a normal rule Courts/Tribunals do not interfere in the exercise of a discretionary authority unless there is evidence of illegality, irrationality and procedural impropriety.

And in *Sanwidi* 2010-UNAT-084, at paragraph 40:

    […] [I]t is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

The Tribunal has consistently held that the UNAT gives the Agency and the Commissioner-General broad discretionary authority in the application of the Agency’s Staff Regulations, Rules and other administrative issuances. The jurisprudence of the UNAT establishes that this authority will not be disturbed unless the decision was arbitrary or capricious, was motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.

55. The jurisprudence also determines that the burden of proof rests on an Applicant alleging that the exercise of the Respondent’s discretionary authority was vitiated. As held by the former United Nations Administrative Tribunal in Judgement No. 93, *Cooperman* (1965), at paragraph XII:

    The burden of proving prejudice or improper motive rests with the Applicant.

Accordingly, an Applicant alleging that a discretionary administrative decision is tainted by prejudice or improper motivation must adduce convincing evidence.

56. The Applicant contends that no lawful grounds were provided to him for the denial of his EVR request and that the decision lacked clarity. However, in his email of 23 September 2016 to the Applicant, the DHR clearly indicated the reasons supporting the decision:
I would like to congratulate you on gaining this fixed term appointment till June 2017.¹

Regrettably, your application for an EVR cannot be supported at this time. Funding for all EVR applications has been suspended and advice is that there will be no further EVR funding available for the rest of the year. At the recent ISUC meeting, management did commit to consider EVR applications from the Syria Field Office.

In regard to your application for a further extension of your SLWOP, I will wait for a recommendation from the GFO but I want to highlight that UNRWA is currently tightening up the previously generous SLWOP arrangements, especially for UNRWA staff who have multiple extensions of SLWOP. As mentioned to the HR Team in the GFO, I am happy to support and advocate on your behalf for a possible transfer to the UN noting how well you are regarded by them.

(emphasis in the original).

From this statement, the Applicant surmises that there were staff members in Syria, although younger and with fewer years of service than the Applicant, who were able to leap ahead of him in terms of priority for EVR. However, all the Applicant has provided is a comment by the DHR that staff in Syria were being considered for EVR, and there is no evidence of whether any staff member in Syria was granted EVR, and, if so, under what circumstances, i.e. for humanitarian reasons. Nor has any evidence been offered to show that any staff member younger than the Applicant and with fewer years of service had been granted EVR ahead of the Applicant. The Applicant’s comment is nothing but conjecture.

57. The Applicant refers to paragraph 12 of PD A/9 providing that “EVR applications will normally be reviewed and approved on a quarterly basis.” The Tribunal draws the attention of the Applicant to the word “normally”, meaning “as a rule” according to the 2011 Concise Oxford English Dictionary. In other words, there may be changes to this general rule, and the change of normal circumstances in the case of the Applicant was the Agency’s financial constraints. When funding is not available for the rest of the year, EVR requests are not

¹ The international P-3 post with UNAMID.
approved. For this very reason, i.e. lack of funds, the placement of the Applicant’s EVR request in the priorities established under PD A/9 becomes a non-issue. The Tribunal finds that the Respondent went further and examined whether humanitarian grounds could apply to the Applicant’s case, although the Applicant had not availed himself of this option. However, the Respondent determined that, in addition to the lack of funds, there were no humanitarian grounds on which to grant the Applicant’s request for EVR.

58. The Applicant contends that his EVR request “for the third quarter review was not looked into at all”. The Applicant is reminded that, prior to the rejection of his request, the DHR had advised Field Offices and Headquarters on 20 August 2016 not to proceed with EVR applications. Therefore, the Applicant’s contention is frivolous.

- **Was the decision biased or discriminatory?**

59. The Applicant claims that there was discrimination in the handling of his EVR request, and that the Respondent’s intention was to force him to resign and thus deprive him of retirement benefits. The Tribunal draws the Applicant’s attention to the following definition of discrimination by the UNAT in *Mashhour, 2014-UNAT-483:* “discrimination is commonly defined as unequal treatment on the basis of a prohibited ground.” Financial constraints – the essential reason behind the denial of the Applicant’s EVR request – is clearly not a prohibited ground. The Applicant is reminded that allegations of discrimination and bias are of a serious nature and should not be made frivolously or without supporting evidence. As held by the UNAT in *Staedtler, 2015-UNAT-547* at paragraph 33:

> Allegations of bias and discrimination are very serious charges which should not be lightly made. They have to be established on the balance of probability by the person alleging same.

Other than speculation leading to unfounded conclusions, the Applicant has not provided any evidence that the Respondent discriminated against him when handling his EVR request or when deciding to deny it. As mentioned earlier, the reason behind the denial was merely lack of funds, and the advisory of the DHR
sent to Field Offices and to Headquarters applied to all staff members and was not directed solely at the Applicant.

60. The Applicant has requested the DHR to provide him with the number of approved EVR applications in Field Offices and at Headquarters for the last five years, in his attempt to show that, when considering the trends and practices of the past years set by the Agency, he has been disadvantaged as a staff member stationed in Gaza. Firstly, the Tribunal is at a loss as to how the Applicant can claim that he was a disadvantaged staff member stationed in Gaza when the Agency went out of its way in granting the Applicant more than four years of SLWOP so that he could develop further skills in a position in a sister UN Agency. Secondly, the Applicant has provided no evidence to back up his claim that he, or any staff member for that matter, is disadvantaged because he or she is stationed in Gaza.

61. The DHR replied to the Applicant that he could not disclose to him facts and figures about EVR applications throughout the Agency for the past five years as this would not be appropriate. The DHR added that he could disclose such information to appropriate authorities, such as the Tribunal. However, the Applicant did not submit a request to the Tribunal for disclosure.

62. Furthermore, the information sought by the Applicant from the DHR would contain some personal and confidential data belonging to staff members who are not part of this application. The Applicant is also reminded that it is not up to him to question or challenge the amount of or reason behind the annual cap set by the Commissioner-General for EVR requests; this is a prerogative of the employer, not the employee. Suffice it for the Applicant to know that the Agency lacked funds for EVR requests and that there were no humanitarian grounds put forward by him on which the Agency could grant his EVR request.

63. Furthermore, the Tribunal finds that the Applicant did nothing other than apply for SLWOP and EVR and then complain when both requests were denied. Indeed, as noted above, in at least two emails, the DHR encouraged the Applicant to urgently contact the HR Department in Gaza to discuss his options. The Applicant did not do so, a possible further indication that he had no plans to return
to UNRWA; instead, he submitted a request for review of the decision to deny his request for EVR.

64. The Tribunal finds that the denial of the Applicant’s EVR request was consistent with the regulatory and administrative framework referred to above and is therefore legally correct, responsible and reasonable given the circumstances. The Tribunal has not found in the record any evidence of prejudice or improper motivation, arbitrariness or capriciousness, procedural irregularity or error of law on the part of the Respondent when he decided to reject the Applicant’s request for EVR.

Other Issues

65. The Applicant complains that he did not receive the letter dated 20 October 2016 until 7 November 2016. The Tribunal points out, however, that he tended his resignation on 30 October 2016, and he filed his application with the Tribunal on 1 November 2016 – six days prior to receiving the email of 7 November 2016 attaching the 20 October 2016 letter. Therefore, the Applicant obviously knew of the decision to deny his request for EVR before receiving the 8 November 2016 letter. Although the 18 day delay in sending the letter is regrettable and without excuse, the Tribunal fails to see the relevance of his contention and finds that the Applicant was not prejudiced by any delay in receiving the written decision only on 7 November 2016.

66. The Applicant indicates that, on 3 October 2016, he had appealed to the Deputy Commissioner-General and requested the Gaza Field Office not to take any action until receipt of the Deputy Commissioner-General’s response to his appeal, i.e. his request for decision review. The Applicant expressed indignation with a letter from H/FHRO dated 10 October 2016 stating that, unless he returned to his duty station by 1 November 2016, he could be separated from service for abandonment of post, thus losing his entitlements to the Provident Fund benefits. The Applicant must understand that a staff member cannot dictate what an Agency department can do, be it the Deputy Commissioner-General, the Gaza Field Office or Human Resources. The administrative process must take its course in compliance with the Regulations and Rules, while the Applicant can prevail
himself of the legal recourses afforded to him by the Regulations and Rules. Had the Applicant read the applicable provisions of the Regulations and Rules, he would have noted that there is no obligation on the part of the Deputy Commissioner-General to reply to a staff member’s request for decision review. When no response is received by the staff member, he or she has the option to file an appeal to the Tribunal within a certain deadline. The Applicant did precisely that. The Tribunal fails to see any prejudice against the Applicant or any denial of his rights in the process.

67. The Applicant also contends that he was outside Gaza and could not report to his duty station within the deadline due to difficult access to Gaza. The Tribunal would like to point out that the Respondent is not responsible for the Applicant’s predicament, as, after all, the Applicant, of his own volition, had decided to work in Africa with UNAMID. To show his genuine intention to resume his duties with UNRWA, and if indeed access to Gaza was impossible, the Applicant could have at least attempted to make arrangements to report to UNRWA Headquarters in Jordan – or another place with easier access – to comply with the deadline, while waiting for check points or entry visas to Gaza to be accessible and available. The Tribunal finds that the Applicant made no serious attempts to comply with the Agency’s instructions to report to duty, and he did not seek any alternatives for dealing with the access to Gaza issue.

68. Given the Applicant’s inertia in dealing with what he claims was a critical situation, the Tribunal has serious doubts about the Applicant’s intention to resume his work with UNRWA. Rather, the evidence indicates that the Applicant requested another year of SLWOP, up to 30 June 2017, and he travelled to Sudan on 29 June 2016 to “start [his] new job with UNAMID”. Thus, his true intent was to string UNRWA along by using SLWOP until he reached the mandatory retirement age of 60 or was able to obtain EVR at some point in the future, in order to receive full service benefits. The notion that the Agency is obligated to grant unlimited SLWOP or EVR to all of its staff members, who leave the employment of UNRWA prior to their mandatory retirement age for better opportunities elsewhere, is absurd.
69. In view of all the above, the Tribunal determines that the Respondent properly exercised his discretionary authority by giving the Applicant’s request for EVR due and fair consideration and by assessing his eligibility in compliance with the Agency’s regulatory framework and relevant administrative issuances. The Tribunal also determines that there is no evidence in the record of any bias, impropriety or discrimination, no motivation by prejudice or other extraneous factors on the part of the Respondent when deciding to reject the Applicant’s request for EVR.

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

70. Having determined that the Respondent’s decisions to deny the Applicant’s requests for SLWOP and EVR were properly made, and that the Respondent’s decisions were not tainted by error of law, procedural irregularity or bias, the Tribunal finds that there is no basis in fact or in law to reverse the impugned decisions.

**Conclusion**

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

(Signed)

_______________________
Judge Bana Barazi

Dated this 19th day of November 2017

Entered in the Register on this 19th day of November 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman