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

SAMMAN

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 Rabah Samman (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 transfer Mr. M. A. A. to the position of Administrative Officer.

Facts

2. Effective 17 October 2006, the Applicant was employed by the Agency as an Administrative Assistant B, Grade 10, Step 12, at the UNRWA West Bank Field Office.

3. By letter dated 31 August 2016, the Deputy Director of UNRWA Operations in the West Bank (“D/DUO/WB”) informed Mr. M. A. A. that he would be transferred to the post of Administrative Officer at the Field Engineering and Construction Services Office, effective 1 September 2016.

4. In a meeting on 23 September 2016, the Applicant discussed his views on Mr. M. A. A’s transfer with the D/DUO/WB and a staff member of the West Bank Infrastructure and Camp Improvement Department. The Applicant claimed that the transfer had not been fair or transparent.

5. On 28 October 2016, the Applicant submitted a decision review request. By letter dated 22 November 2016, the Deputy Commissioner-General affirmed the decision, informing the Applicant that the decision to transfer Mr. M. A. A. did not affect his conditions of employment with UNRWA.

6. On 24 February 2017, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). On 27 February 2017, the application was transmitted to the Respondent.

7. On 29 March 2017, the Respondent filed his reply to the application. The reply was transmitted to the Applicant on 30 March 2017.
Applicant’s contentions

8. The Applicant contends:

i) The decision to transfer Mr. M. A. A. was taken without a competitive selection process; and

ii) He was informed that Mr. M. A. A.’s case was exceptional and that the transfer decision was based on confidential matters.

9. The Applicant requests the Agency to correctly apply the Agency’s recruitment rules.

Respondent’s contention

10. The Respondent contends that the Applicant has not established a breach of the terms of his appointment or the denial of any right; therefore, the application is not receivable.

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

Considerations

Receivability

12. The Applicant contests the decision to transfer Mr. M. A. A. to the post of Administrative Officer at the Field Engineering and Construction Services Office. The Applicant does not claim that any of his rights were violated by the contested decision. The Applicant simply raises the issue that the Agency did not apply a competitive selection process.

13. Article 2(1) of the Tribunal’s Statute at Area Staff Regulation 11.3, provides, in relevant part:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3,
paragraph 1, of the present statute, against the Commissioner-General as the Chief Executive Officer of UNRWA:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointments of the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

14. Drawing from the jurisprudence of the former United Nations Administrative Tribunal in Judgment No. 1157, Andronov (2003), the United Nations Appeals Tribunal (“UNAT”) in the Ngokeng 2014-UNAT-460 has defined an administrative decision that is subject to judicial review as:

26. […] a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

15. Therefore, pursuant to the UNAT’s jurisprudence1, the key characteristic of an administrative decision subject to judicial review is that the decision “produces direct legal consequences” which affect the staff-member’s terms or conditions of appointment. A determination of what constitutes a reviewable administrative decision “will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision”.

16. In the present case, the Tribunal agrees with the Respondent that the Applicant has not established any breach of the terms and conditions of his appointment. The decision to transfer Mr. M. A. A. did not produce direct legal consequences affecting the Applicant’s terms or conditions of appointment. Therefore, the Tribunal holds that the application is not receivable.

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1 Nguyen-Kropp & Postica 2015-UNAT-509
17. The Tribunal draws the Applicant’s attention to Article 10, paragraph 6 of its Statute which provides that “[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party”. The submission of applications like the one under examination could be considered by the Tribunal as an abuse of litigation. However, as it is the first time this Applicant has filed such an application, the Tribunal limits itself to advise him in this regard.

Conclusion

18. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed in its entirety.

(Signed)

Judge Jean-François Cousin

Dated this 20th day of November 2017

Entered in the Register on this 20th day of November 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman