ABU LEHIA

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 Mohammad Abu Lehia (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 consider the period of his medical treatment in Amman from 21 March 2016 to 7 June 2016, to be annual leave instead of sick leave.

Facts

2. Effective 15 September 1988, the Applicant was employed by the Agency as a Medical Officer “B” at Bureij Health Centre, Gaza Field Office (“GFO”).

3. Effective 1 January 2012, The Applicant’s “X” category fixed-term appointment was converted to an “A” category temporary indefinite appointment.

4. On 4 February 2016, the Applicant requested the extension of his service beyond the age of retirement for a period of two years, until 30 June 2018.

5. On 6 February 2016, the Chief, Field Health Programme (“C/FHP”) received the Applicant’s request for sick leave to receive medical treatment, relating to his cardiac condition, in Amman.

6. On 7 February 2016, the Applicant’s request for sick leave was approved by C/FHP for the period from 21 March 2016 to 27 March 2016.

7. On 28 March 2016, the Applicant submitted a medical report issued by the Arab Medical Center in Amman, recommending sick leave from 28 March to 3 April 2016, and noting pains in his back. Later, the Applicant submitted another medical report recommending sick leave for the period from 4 April until 17 May 2016.

8. By email dated 3 May 2016, the Senior Medical Officer (“SMO”) informed the Applicant that his sick leave requests had not been approved, and that his absence would be considered to be annual leave.
9. On 17 May 2016, the Applicant submitted another medical report, recommending an extension of his sick leave for the period from 18 May 2016 to 7 June 2016. Ultimately, the Applicant did not undergo either a cardiac catheterisation nor an open-heart surgery.

10. On 22 June 2016, the Applicant resumed his duties in Gaza. At some point after his return, he was informed that his absence for the period from 21 March 2016 to 7 June 2016 would be considered as annual leave.

11. On 10 July 2016, the Applicant’s request for the extension of his service beyond the age of retirement was approved and his appointment was extended until 30 June 2018.

12. On 31 July 2016, the Applicant submitted a request for review of the decision to consider his absence from 21 March 2016 to 7 June 2016, to be annual leave instead of sick leave.

13. On 31 August 2016, the Director of UNRWA Operations, Gaza (“DUO/G”) affirmed the decision.

14. On 31 October 2016, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 10 November 2016.

15. On 9 December 2016, 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 11 December 2016.

16. By Order No. 102 (UNRWA/DT/2016) dated 13 December 2016, the Tribunal granted the Respondent’s request for an extension of time.

17. On 15 December 2016, the Respondent filed his reply. The reply was transmitted to the Applicant on 18 December 2016.

18. On 28 December 2016, the Respondent submitted the Arabic translation of his reply. The Applicant was copied on the Respondent’s email.
Applicant’s contentions

19. The Applicant contends:

i) He submitted a sick leave request on 6 February 2016 for medical treatment at his own expense outside Gaza. He did not request sick leave to undergo a specific surgery, and his request was approved without stipulating such a condition;

ii) None of the rules and regulations of the Agency stipulate that a staff member is obliged to undergo a surgery for the approval of his/her sick leave; and

iii) He is suffering from a chronic heart condition, and in this respect, he has provided the required evidence to the Agency.

20. The Applicant requests:

i) To consider his leave from 21 March 2016 to 7 June 2016, to be sick leave instead of annual leave; and

ii) To be compensated for the moral damage he suffered.

Respondent’s contentions

21. The Respondent contends:

i) The decision to consider the absence of the Applicant to be annual leave was properly effected according to Area Staff Rule 106.2;

ii) Following the Applicant’s request for the extension of his sick leave, the Agency reviewed the medical reports submitted by the Applicant, decided not to approve his request for further extension of sick leave and revoked the initial sick leave for the following reasons;

a) The medical reports submitted by the Applicant reveal that he did not approach any hospital or doctor in order to have his medical status examined during the initial sick leave period;
b) The medical report recommending sick leave from 28 March 2016 to 3 April 2016 indicates that the Applicant was suffering from pains in his back while he requested sick leave for his heart problems; and

c) The medical report dated 4 April 2016 is not acceptable as the practice within the Agency is to grant sick leave to staff members after having undergone a catheterisation, and not before; and

iii) The relief sought by the Applicant has no legal basis.

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

Considerations

23. The Applicant contests the Agency’s decision to consider his absence from duty to be annual leave instead of sick leave for the period from 21 March 2016 to 7 June 2016.

24. On 7 February 2016, the Applicant’s request for sick leave for medical treatment in Amman was approved by C/FHP for the period from 21 March 2016 to 27 March 2016. The Applicant left Gaza on 21 March 2016. Later, he submitted several certificates issued by the Arab Medical Center in Amman as follows:

i) The first certificate recommended one week rest from 28 March to 4 April 2016, for pains in his back;

ii) The second certificate recommended six weeks of full bed rest from 4 April to 17 May 2016, before undergoing a cardiac catheterisation; and

iii) The third certificate recommended three weeks rest from 18 May to 7 June 2016, to assess his health condition and a possible open-heart surgery.

25. The Respondent provides several grounds for the decision not to grant sick leave to the Applicant. First, the Respondent claims that he did not undergo any
medical examination during his initial sick leave from 28 March to 4 April 2016. Secondly, the first medical report dated 28 March 2016 was about pains in the Applicant’s back and not about his heart problems as outlined in his first request for sick leave. Finally, the medical report dated 4 April 2016 was not acceptable as the practice of the Agency is to grant sick leave to staff members after having undergone a catheterisation, and not before.

26. Area Staff Rule 106.2 provides:

1. Staff members who are incapacitated from the performance of their duties by illness or injury, or whose attendance is prevented by public health requirements, may be granted sick leave with full pay […].

 […]

5. All sick leave must be authorised by the Commissioner-General in accordance with established procedures.

 […]

7. Except with the special approval of the Commissioner-General, no staff member may be granted sick leave for a period of more than 3 consecutive working days without producing a certificate from a duly qualified medical practitioner, to the effect that he/she is unable to perform his/her duties and stating the nature of the illness, and the probable duration of the incapacity. Such certificate shall, except in circumstances beyond the control of the staff member, be produced not later than the end of the 4th working day following the initial absence from duty of the staff member. On receipt of such certificate, the Commissioner-General shall decide whether sick leave should be granted.

27. Area Personnel Directive No. A/6/Part II/Amend.2 provides:

2. Authority for Granting Sick Leave:

Authority for granting sick leave in accordance with Rule 106.2 and the terms of this Directive is delegated to […] Field Human Resources Officers in the Fields.

3. Application for Sick Leave – Procedures

(C) Consultation and Liaison with the Health Programme
[... ] Field Human Resources Officers in the Fields are responsible for ensuring that the following action is taken where necessary:

(i) that sick leave applications, when required under paragraphs 6, 7 and 8 of Rule 106.2, are supported by adequate medical certificates;

(ii) that all cases of doubt regarding the adequacy of such certificates are referred [...] to the Chief, Field Health Programme for Fields for recommendation, and that the staff member is adequately advised of any further steps that he/she may be required to take in order to meet the requirements of the Rule[.] (Emphasis in original)

28. The aforementioned rules stipulate that a staff member who is unable to perform his/her duties has to produce a certificate from a duly qualified medical practitioner in order to be granted sick leave. In addition, the above-mentioned Area Personal Directive clarifies that all cases of doubt regarding the adequacy of such certificates are referred to the C/FHP for recommendation. Therefore, contrary to the Applicant’s allegations, the Agency was entitled to review the adequacy of the certificates he had submitted. The impugned decision not to grant sick leave was a discretionary decision taken by the C/FHP. Nevertheless, this discretion is not unfettered, and the Tribunal is entitled to review whether the decision was arbitrary or tainted by bias and improper motives.

29. The United Nations Appeals Tribunal (“UNAT”) held in its Judgment Abdullah 2014-UNAT-482, in paragraph 60, as follows:

60. [...] [A]s recognised by the UNRWA DT, managerial discretion is not unfettered and the jurisprudence of the Appeals Tribunal has reiterated on numerous occasions that a decision of the Administration may be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors or was flawed by procedural irregularity or error of law.

30. In the present case, the Applicant’s multiple requests for sick leave during the period from 21 March 2016 until 7 June 2016, were rejected or revoked by the Agency.
31. The Applicant’s first request for sick leave was approved by the C/FHP on 7 February 2016, for the period from 21 March 2016 to 27 March 2016. The Agency subsequently cancelled this sick leave, as the Applicant did not provide any evidence establishing that he had undergone a medical examination during this period. The Tribunal agrees with the Respondent’s contention on this point, as the Applicant did not provide any explanations for not having had any medical appointment before 28 March 2016.

32. Nevertheless, the Tribunal holds that the situation is different for the remaining period. On 28 March 2016, the Applicant consulted a doctor at the Arab Medical Center in Amman. He was issued a medical certificate diagnosing pains in his back and recommending sick leave until 3 April 2016. The Agency considered this certificate as inadequate since the Applicant was issued sick leave for a medical treatment of his heart problems and not for pains in his back. The Tribunal does not agree with this line of reasoning. The fact that a staff member suffers from heart problems does not mean that he/she cannot have other medical conditions requiring sick leave. If the Applicant had been in Gaza at that time, he would have been granted sick leave. There was no reason for the Agency to question the adequacy of a certificate issued by a hospital such as the Arab Medical Center. In any case, in order to obviate this doubt, the Agency could have requested from the Applicant a medical examination by an UNRWA doctor at the Headquarters Amman.

33. On 4 April 2016, the Applicant submitted a second medical report for sick leave recommending six weeks of full bed rest before a possible cardiac catheterisation given the Applicant’s medical condition. The Tribunal considers that this certificate is fully adequate and amply credible. Again, had the Applicant remained in Gaza, he would have been granted sick leave for this period too.

34. In the same line of reasoning, the medical certificate recommending sick leave for the period from 18 May 2016 until 7 June 2016, cannot be seriously contested by the Agency. This three-week rest was necessary for a better assessment of the Applicant’s medical condition as well as the necessity of an open-heart surgery in his case.
35. From the Agency’s point of view, it seems that the Applicant’s additional requests for sick leave were not acceptable just because he had originally requested sick leave for a cardiac catheterisation, which he ultimately did not have. The Tribunal does not agree at all with this reasoning. There is no doubt that the Applicant had left for Amman for a cardiac catheterisation. However, his medical condition at that point in time was not appropriate for an immediate operation. Accordingly, he was recommended rest for a protracted period of time. As mentioned before, had the Applicant remained in Gaza and had he submitted medical certificates with respect to his medical condition from a hospital in Gaza, there is reason to believe that he would have been granted sick leave for the recommended period. The fact that the Applicant’s ailments were not related to his heart problems cannot be a ground for refusing to grant him sick leave. Therefore, the Tribunal holds that the medical certificates, submitted by the Applicant, for the period from 28 March until 7 June 2016, were adequate for granting him sick leave. The Agency’s decision to consider his absence during the aforementioned period from duty to be annual leave was manifestly unreasonable and must be rescinded.

36. The Applicant also claims that he suffered from psychological pressure caused by the refusal of his requests for sick leave. In Zhouk 2012-UNAT-224, the UNAT has held:

2. The Dispute Tribunal has an unquestioned discretion and authority to order and quantify compensation under Article 10(5) of its Statute for violation of the legal rights of a staff member as provided under the Staff Regulations, Rules, and administrative issuances.

3. However, not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages. This Court will not approve the award of compensation when absolutely no harm has been suffered. Moral damages may not be awarded without specific evidence supporting the award.

37. As the Applicant did not submit any evidence to support his claim, the Tribunal finds that he failed to prove that the impugned decision caused him moral prejudice. Therefore, the claim for moral damages is dismissed.
Conclusion

38. In view of the foregoing, the Tribunal DECIDES:

The Agency is ordered to amend the Applicant’s leave file and to grant him sick leave for the period from 28 March 2016 until 7 June 2016.

(Signed)  
Judge Jean-François Cousin  
Dated this 14th day of June 2017

Entered in the Register on this 14th day of June 2017

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