ABU FARHA

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 Sufian Abu Farha (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 change his date of birth in the Agency’s records from 6 June 1956 to 6 June 1959.

Facts

2. Effective 4 September 1982, the Applicant was employed by the Agency as Trade Instructor. The Applicant is currently employed as Senior Vocational Training Instructor, Grade 12, at the Wadi Seer Training Centre in the Jordan Field Office.

3. Prior to the start of his employment with the Agency, on 12 July 1982, the Applicant submitted to the Agency an UNRWA Personal History form (“PHf”) indicating that his date of birth is 25 March 1956. The Applicant signed the PHf certifying that the statements in the PHf “true, complete and correct”. Together with the PHf, the Applicant submitted a copy of his birth certificate indicating that his birth date is 6 June 1956. Furthermore, the Applicant submitted copies of his High School diploma and his Jordanian passport, both of which indicate that his year of birth is 1956. The Agency’s personnel records subsequently consistently refer to the Applicant’s date of birth as 6 June 1956, in reliance on the Applicant’s birth certificate.

4. On 21 February 2016, the Applicant requested to be retained in service beyond the official age of retirement of 60 years for a period of two years. His request was approved.

5. On 22 February 2017, the Applicant requested the Agency to correct his date of birth indicating that his actual date of birth is 6 June 1959. On 6 March 2017, the Agency denied the Applicant’s request.

6. On 26 April 2017, the Applicant submitted to the Director of UNRWA Operations, Jordan (“DUO/J”) a request to review the decision denying his request
to change his date of birth. By letter dated 28 May 2017, the DUO/J affirmed the decision.

7. On 24 August 2017, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 27 August 2017.

8. On 26 September 2017, the Respondent filed a “Motion for Extension of Time to File a 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 27 September 2017.

9. By Order No. 140 (UNRWA/DT/2017) dated 8 October 2017, the Respondent’s motion for extension of time was granted.

10. On 10 October 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 12 October 2017.

11. On 2 December 2017, the Applicant filed a “Request for Documents”. The motion was transmitted to the Respondent on 3 December 2017.

12. On 11 December 2017, the Respondent filed a response to the Applicant’s motion. The response was transmitted to the Applicant on 12 December 2017.

13. On 19 December 2017, the Applicant filed a “Request to Provide Documents”.

14. By Order No. 186 (UNRWA/DT/2017) dated 24 December 2017, the Tribunal denied the Applicant’s motion for “Request for Documents” and granted his second motion “Request to Provide Documents”. This motion was transmitted to the Respondent, along with the Order.

15. On 7 January 2018, the Applicant provided documents to the Tribunal, which were transmitted to the Respondent on the same day.

16. On 16 January 2018, the Respondent filed a “Motion for leave to reply to additional documents produced by the Applicant”. The motion was transmitted to the Applicant on the same day.
17. By Order No. 015 (UNRWA/DT/2018) dated 29 January 2018, the Tribunal granted the Respondent’s motion to respond to the additional documents provided by the Applicant.

18. On 1 February 2018, the Respondent filed his comments. The submission was transmitted to the Applicant on 5 February 2018.

19. On 4 April 2018, the Applicant filed a motion to request expedited consideration. The motion was transmitted to the Respondent on 5 April 2018.

**Applicant’s contentions**

20. The Applicant contends:

   i) He has submitted evidence that his correct date of birth is 6 June 1959; and

   ii) It does not make sense that the Agency allows staff to amend their names but does not accept a correction of the date of birth.

21. The Applicant requests:

   i) To correct his date of birth; and

   ii) To be compensated for moral damages and psychological harm.

**Respondent’s contentions**

22. The Respondent contends:

   i) Paragraph 18 of Area Staff Personnel Directive A/9 (“PD A/9”), which came into effect on 1 March 1989, provides that staff members are not allowed to change a previous birth date declaration; and

   ii) This policy and its strict application have been confirmed by the United Nations Administrative Tribunal in Judgment No. 903 (1998).
23. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

Preliminary issue

24. The Tribunal decided not to address the Applicant’s request for expedited consideration with an Order, as the Tribunal was already finalising the review of the Applicant’s case file when the request was received.

Merits

25. The Applicant contests the decision not to change his date of birth in the Agency’s records to 6 June 1959. He claims that he has submitted evidence to show that the earlier submitted date of 1956 was erroneous.

26. The Respondent has submitted evidence that, preceding the start of his employment on 12 July 1982, the Applicant submitted an UNRWA PHf to the Agency indicating that his date of birth was 25 March 1956. The Applicant had signed the PHf certifying that the statements in the PHf “true, complete and correct”. Together with the PHf, the Applicant submitted a copy of his birth certificate indicating that his birth date is 6 June 1956 and copies of his High School diploma and his Jordanian passport, both of which indicate that his year of birth is 1956. The Agency’s personnel records subsequently consistently refer to the Applicant’s date of birth as 6 June 1956, in reliance on the Applicant’s birth certificate. The Respondent claims that the discrepancy between the Applicant’s date of birth on the PHf, 25 March 1956, and the birth certificate date of 6 June 1956, was caused by an acquaintance of the Applicant who had completed the PHf for the Applicant. This is not contested by the Applicant.

27. It is clear from the case file that, with effect from 1 March 1989, the Agency announced that staff members were not allowed to change a previous birth date declaration. An Interoffice Memorandum dated 7 February 1991, clarified clearly the rationale for this policy, explaining that:
If a staff member subsequently [after certifying an initial date of birth] states that his certified date of birth is incorrect, and seeks to change it, the Agency very likely would be placed in the position of having to decide on the validity of conflicting civil or other records. The Agency is not equipped for research of this kind, nor does it have any recognized standing or authority in the matter. Faced with this difficulty, it is entitled to leave its internal records unchanged and to continue to rely upon the information which the staff member certified as accurate at the time of recruitment. [...]  

Admittedly there may be cases - for a variety of reasons - of wrong dates having been provided at the time of appointment, including some in good faith. However, the Administration is just not equipped, either technically or authoritatively, to pass judgment on the authenticity of civil records. The United Nations does not permit changing dates of birth after recruitment. […]

28. Consequently, Paragraph 18 of PD A/9 provides:

A staff member’s age for retirement purposes shall be determined on the basis of evidence on UNRWA personnel records. Staff members will not be allowed to change a previous birth date declaration. […]

29. The above-mentioned texts are clear. Neither the Tribunal nor the Agency is required to check whether the Applicant’s initially submitted date of birth is correct or not. The Tribunal just has to review if the Applicant’s initial declarations with respect to his date of birth clearly mentioned that his birth date is 6 June 1956. While there is a discrepancy in birth dates between the PHf and the Applicant’s birth certificate, this discrepancy concerns a couple of months. Furthermore, the explanation that the PHf was completed by another person explains that discrepancy; moreover, the Applicant’s year of birth on all initially submitted documents is 1956. Consequently, the application must be dismissed.
Conclusion

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

   The application is dismissed.

(Signed)

_______________________________
Judge Jean-François Cousin
Dated this 10th day of May 2018

Entered in the Register on this 10th day of May 2018

(Signed)

___________________________________________
Laurie McNabb, Registrar, UNRWA DT, Amman