Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

JAFARI

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 Moeen Jafari (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 extend his service for a period of two years beyond the age of retirement.

Facts

2. On 6 February 2006, the Applicant entered the service of UNRWA. At the time of the facts material to this application, the Applicant was an Area Loan Supervisor in the Agency.

3. By letter dated 1 December 2016, the Human Resources Services Officer (“HRSO”) informed the Applicant of his impending retirement and suggested that he submit a form, which was attached to the letter, if he was interested in extending his service with the Agency beyond the age of retirement.

4. On 26 December 2016, the Applicant requested the extension of his service for a period of two years beyond his official retirement age of sixty.

5. By letter to the Applicant dated 31 January 2017, the HRSO informed the Applicant that his request was denied and indicated that the Applicant’s separation from the Agency on the basis of retirement would be effective 23 March 2017, his sixtieth birthday.

6. By letter dated 1 March 2017, the Applicant requested the Director of UNRWA Operations, Jordan (“DUO/J”) to reconsider the decision not to extend his service beyond retirement age.

7. By letter dated 21 March 2017, the DUO/J responded, informing the Applicant that his request for reconsideration had been “thoroughly reviewed” and confirming that the decision for the Applicant’s separation from the Agency on retirement basis had been taken “in the interest of the Agency” and in accordance with Area Staff Rule 109.2.
8. By email dated 27 March 2017 to the DUO/J, the Applicant requested decision review.

9. On 24 July 2017, the UNRWA Dispute Tribunal (the “Tribunal”) received the Applicant’s hand-delivered application. It was transmitted to the Respondent on 25 July 2017.

10. On 24 August 2017, the Respondent filed his reply. It was transmitted to the Applicant on 27 August 2017.

11. On 6 September 2017, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

12. The Applicant contends:

   i) The HRSO’s letter of 1 December 2016 and the appended list of Frequently Asked Questions led him to believe that he had a right to an extension of his service once the conditions mentioned in the letter were met;

   ii) He has been denied his right to an extension of his service;

   iii) He had not been informed that his request for an extension had to be approved by the DUO/J;

   iv) The Agency’s decision did not take into consideration his work achievements and his financial and social obligations;

   v) The DUO/J’s response of 21 March 2017 is not an administrative decision because he did not respond to the Applicant’s request for decision review;

   vi) The Agency’s decision has deprived him of the opportunity to be promoted; and

   vii) The fact that another staff member has been granted an extension of service beyond retirement age demonstrates that the denial of his request for extension was an abuse of power.
13. The Applicant requests:

   i) Approval of the extension of his service for two years beyond retirement age along with all associated financial and professional rights;

   ii) Compensation for the moral damage and loss of employment he suffered due to the Agency’s decision; and

   iii) Compensation for the loss of the opportunity to be promoted.

Respondent’s contentions

14. The Respondent contends:

   i) The application is time-barred;

   ii) The decision not to extend the Applicant’s service for two years beyond retirement age was properly effected;

   iii) There is no automatic right to extension of service beyond retirement age;

   iv) The decision was not biased or abusive and was not tainted by error of fact or law; and

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

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

Considerations

16. The Applicant is challenging the Agency’s decision not to extend his service for an additional period of two years beyond the official retirement age of sixty. The Respondent contends that the application is not receivable because it was filed more than 90 days after the Applicant had received the response to the request for decision review.

   Receivability

17. The Applicant reached the age of sixty on 23 March 2017. As per paragraph 3 of Area Staff Rule 109.2, stipulating that the Agency is to give two months advance notice
to a staff member who is approaching retirement age, the HRSO sent to the Applicant a letter dated 1 December 2016, i.e. approximately four months prior to the Applicant’s date of retirement. In relevant parts, the letter states:

1. According to UNRWA personnel records, you will reach the age of retirement on close of business 23 March 2017. Therefore, you will be retired on grounds of age of sixty effective that date in accordance with the provisions of Area Staff Rule 109.2. I am writing to you in advance of this date in order to ensure that you are aware of your entitlements.

[...]

4. If you are interested in extending your service with the Agency beyond the age of sixty, please fill out the attached form and return it within 60 days of the date of this letter noting that the extension of your services beyond the age of sixty is subject to medical fitness and your performance must be rated as at least “fully meets expectations” or a grade 03 in your last two performance evaluation cycle. [sic]

[...]

18. On 26 December 2016, the Applicant completed and signed a form titled “Request to be retained in service beyond attaining the official age of retirement”, thereby requesting the extension of his service for two years beyond the official age of retirement.

19. On 31 January 2017, the HRSO informed the Applicant that his request was denied by the DUO/J:

1. Further to my letter No. E/10510593 – 4073 dated 01 December 2016, I regret to inform you that your request to extend your service beyond the age of sixty is not approved by Director of UNRWA Operation, Jordan, [sic] and your separation from the Agency’s service on retirement basis will be effective close of business on 23 March 2017. Your dues will be paid through a separate Personnel Action Form.

[...]

20. On 1 March 2017, the Applicant wrote to the DUO/J as follows, in relevant parts:

In reference to letter No. 10510593-243 from Ms. Nida Shawa/Human Resources Services Officer dated 31/1/2017 in which I was informed that the DUO/J decided to reject my request
for extension of services after the age of retirement for two years from 23/3/2017, […]

Given that I meet the three requirements with the exception of medical examination (as I was not requested to take it) I was stunned by the decision. I feel it is an unjust decision because I am one of the most experienced, efficient, dedicated, serious and loyal staff members. This is why I am sending this appeal to you. […]

In light of the above, and given that I cannot imagine myself working outside the Agency which I consider as my second family, I request that you reconsider the said decision and approve my extension for additional two years after the age of retirement.

[…] (emphasis added).

21. On 21 March 2017, the DUO/J responded to the Applicant’s 1 March 2017 letter, in pertinent parts,

This is in reference to your letter dated 1 March 2017, in which you requested to reconsider the decision not to approve your request to extend your service with the Agency beyond the age of 60.

Having thoroughly reviewed the concerns you addressed in your request, I note that the decision above was made in accordance with the provisions of Area Staff Rule 109.2 which stipulates that approval of extension beyond the official age of retirement shall be made in the interest of the agency.

Noting that you have met the pre-conditions for consideration for extension of your appointment beyond the official age of retirement as stipulated in paragraph 20 of PD/A/9, I would like to emphasize that the decision was taken in the interest of the Agency as your continuation in the post hinders internal succession plans.

Based on the foregoing, I confirm the content of the Human Resources Officer’s letter Ref. E/10510593-243 dated 31 January 2017 indicating that your separation from the Agency’s service on retirement basis will be effective close of business on 23 March 2017.

22. On 27 March 2017, the Applicant sent an email to the DUO/J titled “Review Decision”: 
Dear Roger,

Regarding the said subject and following to my email letter dated 22/03/2017, this is to update my email kindly find attached.

Sincerely,

Moeen Jafari

The Applicant attached to the above email of 27 March 2017 a request for decision review form completed and dated 22 March 2017.

23. On 24 July 2017, the Applicant hand delivered his application to the Tribunal.

Is the application time-barred?

24. The Respondent contends that the application is time-barred because the clock started running on the Applicant’s receipt of the DUO/J’s letter dated 21 March 2017, and the application was not filed until 24 July 2017, beyond the time limit set in the Tribunal’s Statute and Rules of Procedure, Area Staff Regulation 11.3 and 11.4, respectively.

25. Article 8(1) of the Statute of the Tribunal provides:

1. An application shall be receivable if:

   […]

   (c) An applicant has previously submitted the contested administrative decision for decision review, and

   (d) The application is filed within the following deadlines:

   (i) **Within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or**

   (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.
26. Likewise Article 3 of the Tribunal’s Rules of Procedure provides:

1. An application shall be filed with the Tribunal through the Registrar within:

   (a) 90 calendar days after the Applicant received the decision review, as appropriate; or

   (b) 90 calendar days after the expiry of the relevant response period for the decision review, i.e., 30 calendar days.

27. As evidenced in the record, on 31 January 2017, the HRSO informed the Applicant that the DUO/J had denied his request for an extension of service beyond retirement age. The HRSO did not make the decision – the DUO/J did. Thereafter, on 1 March 2017, the Applicant asked the DUO/J to “reconsider” his decision. The DUO/J responded by letter dated 21 March 2017, explaining in more detail the reason for his decision to deny the Applicant’s request for an extension beyond the age of sixty and stating that his decision was made in accordance with the applicable staff rule.

28. The Tribunal points out that Area Staff Rule 111.2 requires staff members of Field Offices to submit their requests for decision review to the UNRWA Field Office Director in charge of the Field Office, who in the present case happened to be the decision-maker himself, the DUO/J. However, a decision review cannot be conducted by the same person who made the original decision.

29. Area Staff Rule 111.2 provides, in relevant parts, the following:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or contract of employment . . . shall, as a first step, submit a written request for decision review:

   (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office;

   […]
4. The decision review shall be carried out by:

(A) in the case of staff members of Headquarters, or staff members of Field Offices where the contested administrative decision has been made by the Field Office Director, the Deputy Commissioner-General.

[...] Therefore, the DUO/J’s 21 March 2017 letter in response to the Applicant’s request that he reconsider his decision cannot be considered as a response to a request for decision review. Rather, it is reasonable to conclude that the Applicant understood it to be a reconsideration by the DUO/J of his decision to deny the Applicant’s request for an extension beyond retirement. It was only after receiving this decision and the detailed explanation from the DUO/J that the Applicant then submitted his request for decision review on 27 March 2017. The Applicant submitted his request in the recommended form to the appropriate person, i.e. the DUO/J, for review by the appropriate person, i.e. the Deputy Commissioner-General. Having received no response from the Deputy Commissioner-General within 30 days, the Applicant proceeded to file his application with the Tribunal within the statutory time frame.

30. Given the above, the Tribunal determines that the application was timely filed and rejects the Respondent’s contention that it is not receivable.

Merits

Regulatory and Administrative Framework

31. Area Staff Rule 109.2 provides in relevant parts:

1. 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 [...] after having reached the official age of retirement of 60 years when an extension of his/her age limit is authorised under the provisions of paragraph 4 below.

[...] 3. A staff member who is due to retire shall be given not less than 60 (sixty) calendar days’ written notice of his/her retirement. This notice shall specify the date on which the staff member is
to be separated from Agency’s service, which shall not be earlier than his/her 60th birthday.

4. For extensions past the official age of retirement:

[…] 

(B) Staff members reaching the official age of retirement on or after 1 January 2014, may request no later than sixty (60) calendar days after receiving the written notice of retirement referred to in paragraph 3 above, that he or she be retained in service to the Agency beyond attaining the official age of retirement for a cumulative period not to exceed two (2) years.

 […]

(E) Further extensions of service beyond a staff member’s 62nd birthday shall not exceed one year, and may be authorized at the sole discretion of the Commissioner-General. The Commissioner-General retains the authority, in exceptional cases, to deny a request by a staff member to be retained in service beyond the official age of retirement.

32. Also applicable to the present case is Area Personnel Directive No. A/9/Rev.10 (“PD No. A/9/Rev. 10”) on Separation from Service, stating in relevant parts at paragraph 20:

A staff member shall be eligible for consideration for extension of his/her appointment beyond the official age of retirement upon the following pre-conditions:

 […]

b. For staff members reaching the official age of retirement on or after 1 January 2014:

i. Staff members seeking to be retained in service to the Agency beyond attaining the official age of retirement for a cumulative period not to exceed two (2) years must make a request, no later than sixty (60) calendar days after receiving the written notice of retirement referred to in paragraph 3 of Rule 109.2.

 […]

iii. The Director of Human Resources (upon the recommendation of the relevant Department Director) for Headquarters staff, and Field Office Directors for Field staff, shall approve requests made in accordance with
paragraph 20(b)(i) and (ii), provided such requests meet the requirements set out in paragraphs 20(c) and (d) […]].

c. In all cases of extension of service, the staff member’s performance must be rated as at least “fully meets expectations” or a grade of “3” in their last two performance evaluation cycles preceding the staff member’s request for extension of service beyond the official age of retirement.

d. In all cases of extension of service, the staff member shall submit to a medical examination by a doctor nominated by the Agency and it shall be a condition of such extension that the Chief, Field Health Programme in the Fields or Director of Health in the case of Headquarters certifies that the staff member is cleared as medically fit to continue service beyond the official age of retirement.

[…].

Was the decision to deny the Applicant’s request for an extension of service beyond the age of retirement lawful?

33. The Applicant is reminded that the Agency has no obligation to accept a staff member’s request for an extension of service beyond the age of retirement. Extension of service is not a right, it is an exception to the normal rule of retirement at the age of 60. Indeed PD No. A/9/Rev.10 states at paragraph 20 that “[a] staff member shall be eligible for consideration for extension of his/her appointment beyond the official age of retirement …” (emphasis added). It does not say that the staff member shall be eligible for an extension – it clearly states “eligible for consideration”. Reading Area Staff Rule 109.2 (4) as a whole, the Agency may exceptionally extend the service of a staff member beyond retirement age when such an extension is in the interest of the Agency. Therefore, the Rules give the Agency this discretionary authority, and the Tribunal finds that the Agency properly exercised its authority when deciding that it was not in its interest to extend the Applicant’s service beyond retirement age.

34. As duly noted by the Respondent, this Tribunal has repeatedly held that the relevant rules authorise the Agency to grant an extension of service beyond retirement age but does not entitle a staff member to such a right. Therefore, the Applicant’s claim that there were only two conditions that had to be met before being granted an extension is misplaced. These two conditions are the minimum that must be met before the Agency
can give further consideration to the request for extension in light of what is in the best interest of the Agency. There is a reason for the rule and a reason for the exception, and it is not logical to assume that the exception is automatic once pre-conditions are met. The Commissioner-General and those delegated with authority for approving extensions beyond retirement are vested with the discretionary authority to do what is in the best interest of the Agency.

Was the Respondent’s decision arbitrary?

35. The Applicant has not claimed that the Respondent’s decision not to extend his service was arbitrary or capricious. Upon examination of the record, the Tribunal does not find any evidence of arbitrariness or prejudice, procedural irregularity or error of law that could taint the Respondent’s decision to deny the Applicant’s request for extension of service beyond the official retirement age.

Does the relief sought have any legal basis?

36. The Applicant requests that the Tribunal order the extension of his service with the Agency for two years beyond the official retirement age and grant him compensation for the material and moral damages he has allegedly sustained due to the Agency’s decision.

37. The Tribunal will not order the Applicant’s extension of service for two years beyond retirement age because it is not the role of the Tribunal to do so. The Tribunal refers to the United Nations Appeals Tribunal (“UNAT”) which held in its first session in 2010 in Sanwidi 2010-UNAT-084 that it is not “the role of the Tribunal to substitute its own decision for that of the Secretary-General”. Furthermore, the Tribunal finds that the Respondent’s decision was a lawful exercise of discretionary authority and untainted by arbitrariness or prejudice. Consequently, there is no basis on which to grant the Applicant’s request for compensation.

38. The Tribunal notes that the Applicant has provided no evidence of the material and moral hardship he has allegedly endured because of the Agency’s decision not to extend his service beyond retirement age. No compensation will be awarded when no harm has been suffered, as held by the UNAT in Antaki, 2010-UNAT-095.
Conclusion

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

(Signed)

_______________________
Judge Bana Barazi
Dated this 13th day of May 2018

Entered in the Register on this 13th day of May 2018

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman