HABASH

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 Elias Habash (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 calculate his separation benefits according to the new Occupational Health Salary Scale.

**Facts**

2. Effective 28 June 2006, the Applicant was employed by the Agency as a Field Family Health Officer on a fixed-term appointment, Grade 17, at the Jerusalem Field Office, West Bank. Effective 28 June 2016, the Applicant’s appointment was converted from the “X” to the “A” category, changing his appointment into a temporary indefinite appointment.

3. Following the Applicant’s request for an extension of service beyond the age of retirement, he was informed by letter dated 28 January 2015 that his request had been approved and that his service would continue until 31 July 2017.

4. On 7 December 2016, the Director of Human Resources (“DHR”) issued Area Staff Circular No. A/05/2016 with subject “Information on Occupational Health Salary Scale and Post Harmonization” (“Circular”). The Circular informed staff members that the Commissioner-General (“CG”) had decided to introduce an Occupational Health Salary Scale (“OHSS”) initially for Headquarters (“HQ”) Amman, Jordan, Lebanon and Syria Field Offices with an effective date of 1 January 2017.

5. By memorandum dated 29 December 2016, the CG included the new OHSS for Lebanon, Syria, Jordan, West Bank and Gaza effective 1 January 2017. Amendments to the Area Staff Rules were issued effective 1 January 2017.

6. A new Area Staff Rule 113.1 regarding the retirement benefits for staff members under the OHSS was introduced on 9 February 2017, with effective date 1 January 2017.
7. By letter dated 1 February 2017, the Director of UNRWA Operations, West Bank (“DUO/WB”) informed the Applicant that, as of 1 January 2017, his new health level was HL9, Step 5.

8. On 31 July 2017, the Applicant was separated from the Agency following the expiration of the extension of his service beyond the official retirement age. On the same day, the Applicant submitted a request for review of the decision to calculate his retirement benefits according to the new OHSS.

9. On 28 September 2017, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 1 October 2017.

10. On 23 October 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 24 October 2017.

**Applicant’s contentions**

11. The Applicant contends:

   i) The OHSS was supposed to be the “best scale ever for health staff salaries including the best retirement benefits”. It was implemented without providing him clarification on the new conditions;

   ii) Per the calculation under the new OHSS, his retirement benefits are significantly less; and

   iii) The new calculation under the OHSS is unfair and improper.

12. The Applicant requests his retirement benefits to be calculated based on his last earned base salary, resulting in an increase of more than JOD9,400.
Respondent’s contentions

13. The Respondent contends:

   i) At the time the Applicant filed his application, the Agency had not yet finalised the computation of the Applicant’s retirement benefits. Therefore, the application is filed prematurely; and

   ii) The Applicant is challenging the implementation of the OHSS, which is not an appealable administrative decision.

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

Considerations

15. The Applicant contests the method used by the Agency to calculate his separation benefits following his retirement on 31 July 2017. However, the Applicant has not identified a specific unilateral act of individual application in either his request for decision review or in his application. The Applicant, in fact, challenges the implementation of the OHSS, claiming that his retirement benefits are lower under the OHSS scheme than if the calculation had been based on his last earned salary.

16. 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.
17. 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.

18. 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.

19. Considering that, in the instant application, the Applicant is directly contesting a rule and no clear administrative decision in a precise individual case can be identified, the Tribunal holds that the application is not receivable.

¹ *Nguyen-Kropp & Postica* 2015-UNAT-509
Conclusion

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

The application is dismissed.

(Signed)

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Judge Jean-François Cousin

Dated this 23rd day of July 2018

Entered in the Register on this 23rd day of July 2018

(Signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman