AYESH

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 Masad Hasan Ayesh (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 terminate his services in the interest of the Agency.

Facts

2. Effective 1 December 1989, the Applicant was employed by the Agency on a fixed-term appointment, as Clerk/Typist in the Gaza Field Office (“GFO”). After several promotions and a reclassification, the Applicant occupied the post of Human Resources Officer, Grade 17, Step 8, on a temporary indefinite appointment, at Headquarters Gaza.

3. On 26 June 2014, the Applicant was offered a temporary assignment on secondment for eight months at the P-3 level under an Inter-Organization Agreement as Human Resources Officer in the United Nations Mission in the Republic of South Sudan.

4. Following the Applicant’s acceptance of the above-mentioned offer, the Applicant requested the Agency for Special Leave Without Pay (“SLWOP”). The Applicant’s consecutive requests for SLWOP were granted by the Agency for more than three years in total, lastly until 29 December 2017.

5. On 27 September 2017, the Applicant applied for early voluntary retirement (“EVR”).

6. By email dated 16 October 2017, sent on behalf of the Chief, Human Resources Operations, Services Division (“C/HROSD”), the Applicant was informed that “EVR applications, due to budgetary implications, [were] only being considered for humanitarian cases and […] that the reasons provided in [his] application were not classified as humanitarian”.
7. By letter dated 28 December 2017, the C/HROSD informed the Applicant that his services would be terminated in the interest of the Agency in accordance with Staff Regulations 9.1 and 9.3 and that he would be eligible to receive a termination indemnity calculated as of the close of business 29 December 2017.

8. By email to the C/HROSD dated 8 January 2018, the Applicant referred to his EVR application and requested the implementation of paragraphs 8 and 9 of Area Staff Rule 109.2.

9. By email to the Director of Human Resources (“DHR”) dated 23 January 2018, the Applicant requested the approval of his EVR.

10. By email to the Applicant dated 25 January 2018, the DHR recalled the C/HROSD’s email dated 16 October 2017, and noted that a reconsideration of his EVR application was not possible.

11. On 7 February 2018, the Applicant submitted a request for decision review.

12. On 24 April 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 25 April 2018.

13. On 25 May 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 27 May 2018.

**Applicant’s contentions**

14. The Applicant contends:

   i) He should not have been terminated in the interest of the Agency as he is eligible for EVR; and

   ii) He served UNRWA for more than 25 years and has the highest priority among EVR applications.

15. The Applicant requests:

   i) The withdrawal of his termination letter; and
ii) To have paragraphs 8 and 9 of Area Staff Rule 109.2 applied to his case.

Respondent’s contentions

16. The Respondent contends:

i) Area Staff Personnel Directive A/9 (Rev. 10) (“PD A/9”) and Staff Rule 109.2 provide that the DHR has the authority to approve or reject applications for EVR. Approval of EVR applications is subject to a financial limit established in the form of an annual cap by the Commissioner-General;

ii) Area Staff Circular No. A/02/2017 on EVR Budget Allocation Strategy of 2017 provides in pertinent part that:

5. Central management and control shall be maintained by Human Resources Services Division at HQ Amman in respect of administration, review and approval of eligible EVR requests received from Field Offices in order to ensure that the EVR budget is equitably disbursed[;] [and]

iii) EVR is not an entitlement and is granted at the Agency’s discretion based on the enumerated criteria as specified in the UNRWA regulatory framework. The Applicant did not establish that he had grounds that were humanitarian and therefore did not meet the criteria for priority consideration.

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

Considerations

18. The Applicant contests the Agency’s decision to terminate his services in the interest of the Agency. The Applicant claims that paragraphs 8 and 9 of Area Staff Rule 109.2 give him the prerogative to be placed on EVR rather than to be terminated.

19. As per paragraphs 8 and 9 of Area Staff Rule 109.2:

8. A staff member may leave the Agency’s service by early voluntary retirement (EVR):
(A) (i) On or after his/her 50th birthday, if he/she has at least 10 years of qualifying service, as defined under paragraph 6 above; or

(A) (ii) After his/her sixtieth (60th) birthday, if he/she has at least 10 years of qualifying service, as defined under paragraph 6 above, for staff members whose service has been extended beyond the official age of retirement upon a staff member’s request under sub-paragraphs 4 (B) or (C) of this Rule.

(B) On or after he/she has completed 25 years of qualifying service, as defined under paragraph 6 above; or

(C) On or after his/her 45th birthday and before his/her 50th birthday if he/she has at least 10 years of qualifying service, as defined under paragraph 6 above;

(D) After he/she has completed between 20 and 24 years of qualifying service, as defined under paragraph 6 above.

9. A staff member who is eligible for early voluntary retirement under paragraph 8 of this rule, and who, during the period of such eligibility, receives a notice of termination of his/her appointment under staff regulation 9.1 (other than on grounds of health; i.e., incapacitation for further service with the Agency), may at his/her written request leave the Agency's service by early voluntary retirement under the provisions of paragraph 8 on the date established for the termination of his/her appointment, and the notice of termination of his/her appointment shall accordingly be withdrawn.

Early voluntary retirement may not be substituted for any other mode of separation. The early voluntary retirement benefit of a staff member who requests early voluntary retirement under the provisions of paragraph 8 shall be calculated in accordance with paragraph 5 of this rule.

20. For the implementation of Area Staff Rule 109.2, PD A/9, provides in relevant part:

12. EVR applications under sub-paragraphs 8(A) and (B) of Area Staff Rule 109.2 have the highest priority among EVR applications. These applications will be considered in descending order from the highest combination of years of age and years of service. EVR applications will normally be reviewed and approved on a quarterly basis.

13. EVR applications under sub-paragraphs (C) and (D) of Area Staff Rule 109.2, will be considered in descending order from applications with the highest combination of years of age and years
of service. The Director of Human Resources may postpone the approval of EVR applications under sub-paragraphs (C) and (D) to the end of the financial year in order to assess available funds and to meet unforeseeable demands under sub-paragraph (A) and (B) of Area Staff Rule 109.2 and paragraph 15 below. Unsuccessful applicants may submit applications for EVR in subsequent years.

[...]  

15. At the discretion of the Director of Human Resources, applications for EVR may be exceptionally approved for humanitarian reasons, in cases of redundancy and in the interest of the Agency, subject to applicants meeting the EVR requirements under paragraph 8 of Area Staff Rule 109.2.

16. The approval of EVR applications is subject to a financial limit established in the form of an annual cap by the Commissioner-General.

21. The purpose of Area Staff Circular No. A/02/2017 on EVR Budget Allocation Strategy of 2017 is to advise on the approval process of EVR requests submitted Agency-wide during the financial year of 2017. The Circular provides in relevant part:

3. The EVR cash budget allocation for 2017 gives the priority to humanitarian cases only. [...]  

5. Central management and control shall be maintained by the Human Resources Operational Services Division at Headquarters Amman in respect of administration, review and approval of eligible EVR requests received from all duty stations in order to ensure that the EVR budget is equitably disbursed.

22. In the present case it is not disputed by the parties that the Applicant was eligible to request EVR. The Applicant correctly referred to the applicable provisions and criteria set out in Area Staff Rule 109.2 with regard to his age and years of service. However, the Applicant must be made aware of the fact that his eligibility for EVR is no guarantee that his EVR request will be granted, as it is not an unconditional right.

23. The United Nationals Appeals Tribunal (“UNAT”) has stated in *Madi 2018-UNAT-853*: 

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27. The UNRWA DT held correctly that while Mr. Madi was eligible to be considered for EVR in terms of UNRWA Area Staff Rule 109.2, he did not enjoy an unconditional right to EVR.

24. From the above-mentioned judgment of the UNAT, it is clear that the Agency has the authority to deny a request for EVR when the Agency’s financial situation does not allow it to grant such requests. The Applicant does not contest the Agency’s funding crises for the years 2017 and 2018.

25. From the case file, it is clear that the decision not to grant the Applicant’s request for EVR was primarily based on the lack of funds. Furthermore, the Agency had indicated to the Applicant that the reasons which he had proffered in his application for EVR, were not classified as humanitarian. The Agency had duly considered and evaluated the Applicant’s request against the criteria set out in the UNRWA Area Staff Rules and other relevant administrative issuances.

26. The Tribunal finds that the denial of the Applicant’s EVR request was consistent with the regulatory and administrative framework referred to above and is therefore legally correct, responsible and reasonable given the circumstances. The Tribunal has not found in the record any evidence of prejudice or improper motivation, arbitrariness or capriciousness, procedural irregularity or error of law on the part of the Respondent when he decided to reject the Applicant’s request for EVR. Therefore, the decision to deny the Applicant’s EVR request was not unlawful and, as the only reason for contesting the decision to terminate his appointment was the alleged unlawful decision to deny his request for EVR, the application must be dismissed.
Conclusion

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

The application is dismissed.

Judge Jean-François Cousin

Dated this 10th day of July 2019

Entered in the Register on this 10th day of July 2019

Laurie McNabb, Registrar, UNRWA DT, Amman