EL ASWAD

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:
Michael Schoiswohl (A/DLA)
Introduction

1. This is an application by Hisham El Aswad (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 service computation date.

Facts

2. Effective 1 October 2004, the Applicant was employed by the Agency as Quality Control Engineer at the Gaza Field Office (“GFO”) on a daily paid contract. His contract was extended several times.

3. Effective 1 January 2010, the Applicant was employed by the Agency as Quality Control and Safety Engineer on a Limited Duration Contract (“LDC”). The Applicant’s contract was extended several times. Effective 1 November 2013, the Applicant was employed on a fixed-term appointment by the Agency as Technical Assistant, Grade 11, expiring on 31 October 2016. His appointment was extended, and at the time relevant to the application, the Applicant held this position.

4. On 18 July 2017, an email was sent to the Director of Human Resources (“DHR”) on behalf of the Applicant and five other staff members, with respect to their entry on duty dates. The Applicant and the other staff members requested that their service computation dates be amended to include their prior service on daily paid contracts and LDCs.

5. On 6 March 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) responded to the email indicating that, for the purpose of calculating a service computation date, there is no explicit provision in the Agency’s regulatory framework for recognizing prior service in the contract modalities of daily paid and LDC.

6. On 6 May 2018, the Applicant submitted his request for decision review seeking the rescission of the decision dated 6 March 2018.
7. On 26 July 2018, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 31 July 2018.

8. On 29 August 2018, the Respondent filed a motion for extension of time to file his reply outside the 30-calendar 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 the same day.


10. On 11 October 2018, the Respondent filed a motion for further extension of time to file his reply. On 14 October 2018, the motion was transmitted to the Applicant.


12. On 23 November 2018, the Respondent filed his reply. It was transmitted to the Applicant on 25 November 2018.

13. On 11 December 2018, the Applicant filed a motion for leave to file observations. It was transmitted to the Respondent on the same day.

14. By Order No. 238 (UNRWA/DT/2018) dated 20 December 2018, the Tribunal granted the Applicant’s motion.

15. On 2 January 2019, the Applicant submitted his observations on the Respondent’s reply. The Applicant’s observations were transmitted to the Respondent on 3 January 2019.

16. By Order No. 152 (UNRWA/DT/2019) dated 1 August 2019 (“Order No. 152”), the Tribunal ordered the parties to submit their comments on the issue of receivability of the application.

17. On 15 August 2019, the Applicant filed his comments in response to Order No. 152. The comments were transmitted to the Respondent on 18 August 2019.
18. On 15 August 2019, the Respondent submitted his comments to Order No. 152. The comments were transmitted to the Applicant on 18 August 2019.

**Applicant’s contentions**

19. The Applicant alleges abuse of power and procedural irregularity.

20. The Applicant requests:
   
i) The cancellation of the decision not to amend his service computation date; and

ii) Compensation for moral damages.

**Respondent’s contentions**

21. The Respondent contends:
   
i) In accordance with paragraph 3 of Area Staff Personnel Directive No. A/4/Part VI/Rev. 6, a service computation date is normally the same date as the entry on duty date. The Applicant’s service computation date is his entry on duty date as an Area Staff member on a fixed-term appointment; and

ii) The application is not receivable as the contested decision is not an appealable administrative decision.

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

**Considerations**

*Receivability*

23. On 18 July 2017, an email was sent to the DHR on behalf of the Applicant and five other staff members with regard to their entry on duty date. On 6 March 2018, the DUO/G responded to the email indicating that, for the purpose of calculating a service computation date, there is no explicit provision in the Agency’s regulatory framework for recognizing prior service in the contract modalities of daily paid and LDC. The Applicant contests this decision.
24. It is clear from the case file that the Applicant’s motive for requesting a change of his service computation date is based on the impact this change would have on future events, such as his retirement benefits.

25. Article 2(1) of the Tribunal’s Statute at Area Staff Regulation 11.4, 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 appointment or 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.

26. Drawing from the jurisprudence of the former United Nations Administrative Tribunal in Judgment No. 1157, Andronov (2003), the United Nations Appeals Tribunal (“UNAT”) in Ngokeng 2014-UNAT-460 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 [footnote omitted].

27. Pursuant to the UNAT’s jurisprudence, the key characteristic of an administrative decision that is subject to judicial review is that the decision “produces direct legal consequences” which affect the staff member’s terms or conditions of appointment.

28. In the case at hand, the decision not to change the Applicant’s service computation date upon request did not produce direct legal consequences affecting
the Applicant’s terms or conditions of appointment. As a result, the Tribunal is not competent to hear and pass judgment on the application challenging the validity of that decision.

29. In the event, potentially in the future, the Applicant wants to contest a decision taken by the Agency affecting the terms or conditions of his employment, like for instance the calculation of his retirement benefits, he is allowed to raise before the Tribunal his contention that his service computation date was miscalculated by the Agency. However, at this point in time, the contested decision is not an appealable administrative decision, and therefore the application is not receivable.

Conclusion

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

The application is dismissed.

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Judge Jean-François Cousin
Dated this 25th day of August 2019

Entered in the Register on this 25th day of August 2019

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Laurie McNabb, Registrar, UNRWA DT, Amman