MUSTAFA et al.

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT ON RECEIVABILITY

Representative for Applicants:
Diab Al-Tabari

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. Separate applications have been filed by eight staff members, Ahmad Mustafa, Hicham El Chouli, Nabil Ahmad, Jamil Haj Dawud, Mohammad Serhan, Kassem Rabie, Ali Al Hafi and Jamil Abu Heit (the “Applicants”), 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 grant them higher steps following the conversion of their contractual modalities to Fixed-Term Appointments (“FTAs”).

Facts

2. Effective 1 March 2017, Applicants Ahmad Mustafa, Hicham El Chouli, Mohammad Serhan, Kassem Rabie, Ali Al Hafi and Jamil Abu Heit were offered FTAs at the Lebanon Field Office (“LFO”).

3. Concerning Applicants Nabil Ahmad and Jamil Haj Dawud, they were also offered FTAs at the LFO, respectively, effective 1 January and 1 March 2018.

4. In November 2017, the Applicants requested to be granted higher steps with respect to their FTAs.

5. By memorandum to the Director of Human Resources (“DHR”) dated 16 January 2018, the Director of UNRWA Affairs, LFO (“DUA/L”) requested to set the steps of 10 staff members, including the Applicants, at Step 10, retroactively from the date of their appointments.

6. By memorandum to the DUA/L dated 15 March 2018, the Officer-in-Charge, Human Resources Department (“OiC/HRD”) denied the DUA/L’s request.

7. By email dated 19 March 2018, the Project Manager, Nahr el-Bared Camp, Reconstruction Unit, (“PM/NBC/RU”) informed the Applicants about the Agency’s decision not to grant them higher steps following the conversion of their contractual modalities to FTAs.
8. The Applicants each requested review of the contested decision on 17 July 2018.

9. On 14 and 15 March 2019, the present applications were filed with the UNRWA Dispute Tribunal (“Tribunal”). The applications were transmitted to the Respondent on 26 March 2019.

10. On 19 April 2019, the Respondent filed a motion for consolidation of the applications. The motion was transmitted to the Applicants on 21 April 2019.

11. By Order No. 095 (UNRWA/DT/2019) dated 1 May 2019, the Tribunal granted the Respondent’s motion for consolidation of the applications and ordered the Respondent to submit his consolidated reply on or before 31 May 2019.

12. On 31 May 2019, the Respondent filed a motion for an extension of time to file his consolidated reply. The motion was transmitted to the Applicants on 2 June 2019.

13. By Order No. 118 (UNRWA/DT/2019) dated 12 June 2019, the Tribunal granted the Respondent’s motion for an extension of time to file his consolidated reply.

14. On 12 July 2019, the Respondent filed his consolidated reply. This was transmitted to the Applicants on 14 July 2019.

15. On 23 July 2019, the Applicants filed a motion to submit observations on the Respondent’s consolidated reply. The motion was transmitted to the Respondent on 24 July 2019.

16. By Order No. 155 (UNRWA/DT/2019) dated 6 August 2019, the Tribunal granted the Applicants’ motion to submit observations on the Respondent’s consolidated reply.

17. On 26 August 2019, the Applicants submitted their observations on the Respondent’s consolidated reply. The Applicants’ submission was transmitted to the Respondent on the same day.
Applicants’ contention

18. The Applicants contend that they must be treated similarly with other staff members, and accordingly, they request to be granted additional steps.

Respondent’s contention

19. The Respondent contends that the Applicants failed to submit timely requests for decision review, and therefore, the applications are not receivable ratione materiae.

20. The Respondent requests the Tribunal to dismiss the applications in their entireties.

Considerations

21. The Applicants contest the Agency’s decision not to grant them higher steps following the conversion of their contractual modalities to FTAs. However, the Respondent submits that the applications are not receivable, as the Applicants failed to submit timely requests for decision review.

22. It is clear from the case record that the Applicants were informed of the impugned decision on 19 March 2018. All Applicants also indicate in their applications that they submitted their requests for decision review only on 17 July 2018. Furthermore, in their observations dated 26 August 2019, the Applicants do not contest the Respondent’s allegation that their requests for decision review were untimely.

23. In this respect, Area Staff Rule 111.2 provides, in relevant parts, as follows:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:
(A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office[.]

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3. A staff member shall submit a request for decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

24. The United Nations Appeals Tribunal (“UNAT”) held in Ajdini et al. 2011-UNAT-108, paragraph 23, that:

[…] An application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.

25. Considering the fact that the Applicants admit that they did not submit timely requests for decision review, as required under the aforementioned Area Staff Rule 111.2, prior to filing their applications before the Tribunal, and that the Tribunal has no jurisdiction to waive this requirement, the Tribunal holds that the applications are not receivable *ratione materiae.*
Conclusion

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

The applications are dismissed.

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Judge Jean-François Cousin

Dated this 18th day of June 2020

Entered in the Register on this 18th day of June 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman