EL SHARIF

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 Fayza El Sharif (“Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (“Respondent”), not to calculate her retirement benefits based on her last base salary.

Facts

2. Effective 1 December 1981, the Applicant was employed by the Agency on a Temporary Indefinite Appointment at Grade 07, Step 01, as Staff Nurse at the UNRWA Swedish Health Centre.

3. After several transfers and promotions, at the time material to the instant application, the Applicant occupied the post of Field Nursing Services Officer, Grade 16.

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 a new Occupational Health Salary Scale (“OHSS”), initially for Headquarters Amman and the Jordan, Lebanon and Syria Field Offices with an effective date of 1 January 2017.

5. On 14 December 2016, the CG confirmed that the OHSS was also extended to staff members in the Gaza and West Bank Field Offices. Corresponding amendments to Area Staff Rules were issued on 29 December 2016, and entered into force on 1 January 2017.

6. A new Area Staff Rule 113.1 regarding the retirement benefits for staff members under the OHSS was also introduced on 9 February 2017, with an effective date of 1 January 2017.
7. By letter dated 19 January 2017, the Applicant was informed that her grade under the OHSS would be HL8, Step 2 effective 1 January 2017.

8. By letter dated 22 July 2018, the Head, Field Human Resources Office informed the Applicant that she would be retired on grounds of age effective 30 September 2018. The Applicant retired on the due date and was paid her retirement benefits amounting to USD98,101.35.

9. On 16 October 2018, the Applicant submitted a request for decision review regarding the calculation of her retirement benefits.

10. By letter dated 28 October 2018, the Director of UNRWA Operations, GFO ("DUO/G") affirmed the contested decision.

11. On 5 November 2018, the present application was filed with the UNRWA Dispute Tribunal ("Tribunal"). The application was transmitted to the Respondent on 6 November 2018.

12. On 7 December 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 10 December 2018.

13. On 23 December 2018, the Respondent filed a motion for extension of time to translate his reply. The motion was transmitted to the Applicant on 24 December 2018.

14. By Order No. 001 (UNRWA/DT/2019) dated 2 January 2019, the Tribunal granted the Respondent’s motion for extension of time to translate his reply.

15. On 13 March 2019, the Respondent submitted the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

16. The Applicant contends that, pursuant to the applicable regulations, the law of the host country and international law, the calculation of her retirement benefits must be based on her last base salary.
17. The Applicant requests that her retirement benefits be calculated based on her last base salary that she had received on 11 November 2018.

**Respondent’s contentions**

18. The Respondent contends:

   i) The Applicant’s reference to the law of the host country is not relevant;

   ii) The evidence clearly establishes that the formula prescribed in Area Staff Rule 113.1 was correctly applied to calculate the Applicant’s retirement benefits;

   iii) There is no doubt as to the calculation method prescribed in Area Staff Rule 113.1;

   iv) The Applicant’s assertion that the Agency’s regulatory framework dictate that the entirety of retirement benefits should be calculated based on her last base salary is misconceived; and

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

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

**Considerations**

20. The Applicant contests the Agency’s decision not to calculate her retirement benefits based on her last base salary.

21. At the outset, the Tribunal recalls that staff members’ conditions of employment are governed solely and exclusively by the Agency’s regulatory framework. As such, the Applicant’s assertion that the law of the host country and international law require the retirement benefits to be calculated on the last base salary is irrelevant.
22. Area Staff Circular No. A/05/2016 dated 7 December 2016 informed staff members that the CG had decided to introduce a new OHSS, initially for Headquarters, Amman and the Jordan, Lebanon and Syria Field Offices, with an effective date of 1 January 2017. On 14 December 2016, the CG confirmed that the new OHSS would be extended to the Gaza and West Bank Field Offices.

23. By Transmittal Memorandum No. 163 dated 29 December 2016, corresponding amendments to Area Staff Rules were issued and entered into force on 1 January 2017.

24. The Tribunal further notes that Area Staff Rule 113.1, which sets out the method for calculating retirement benefits for staff members under the new OHSS, was introduced on 9 February 2017, with an effective date of 1 January 2017.

25. Area Staff Rule 113.1 provides:

**RETIREMENT BENEFIT**

2. (A) A staff member who is in receipt of a salary based on the Occupational Health Salary Scale, set out in respective appendices to rule 103.1, and has completed not less than ten years of qualifying service shall, upon retirement on grounds of age, become eligible to receive a standard retirement benefit computed as follows:

i. 11 percent of the annual base salary as at 31 December 2016 for each year of qualifying service through 31 December 2014, plus

ii. 12 percent of the annual base salary as at 31 December 2016 for each year of qualifying service from 1 January 2015 to 31 December 2016, plus

iii. 12 percent of the ending annual base salary for each year of qualifying service after 1 January 2017 (Emphasis in original).

26. By its Judgment *Ghusoub* 2019-UNAT-905, the United Nations Appeals Tribunal affirmed that, after the effective date of new Area Staff Rule 113.1, the CG was obliged to calculate the staff members’ retirement benefits in accordance with its methodology.
27. It is not contested by the Applicant that the date of her retirement was after 1 January 2017, i.e., 30 September 2018. Nor is it contested that the Agency applied the aforementioned provisions for the calculation of her retirement benefits. Therefore, the application must be dismissed.

Conclusion

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

The application is dismissed.

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Judge Jean-François Cousin

Dated this 9th day of February 2020

Entered in the Register on this 9th day of February 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman