



UNRWA DISPUTE TRIBUNAL

Case No.: DT/ SFO /2008/07
Judgment No.: UNRWA DT/ 2011 /002
Date: 27 July 2011
Original: English

Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

AM ALI

v.

COMMISSIONER GENERAL
OF THE UNITED NATIONS RELIEF AND
WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant:
Aref Al-Zufayri

Counsel for Respondent:
W. Thomas Markushewski

Introduction

1. This is an application made by Ragheda Mohammed Am Ali (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 accept her request to rescind her request for early voluntary retirement.

2. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board (JAB) was abolished as of 1 July 2009. Effective 1 June 2010, as set out in Area Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (“the Tribunal”) and all appeals pending with the JAB on the date of its abolition, including this application, were transferred to the Tribunal.

3. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of a Joint Appeals Board has been submitted to the Commissioner-General.

Facts

4. Effective 14 September 1991, the Applicant was employed by the Agency as a Teacher at Atleet School, in the area of Lattakia, Syria.

5. By letter dated 26 September 2007, she requested separation from the Agency’s service.

6. By letter dated 18 October 2007, the Applicant was informed that her early voluntary retirement will be effective on 21 October 2007.

7. Effective 21 October 2007, she retired from the Agency and all relevant separation payments were made to her.
8. By letter dated 21 October 2007, the Applicant requested the cancellation of her request for early voluntary retirement.
9. By letter dated 1 November 2007, she was informed that “as communicated to you through your supervisors, your request is not approved.”
10. By letter dated 20 June 2008, the Applicant filed an appeal with the JAB.
11. By letter dated 12 August 2008, the JAB acknowledged receipt of the appeal and requested the Applicant to complete an appeal form and to submit attachments “in particular your request letter to the Director of UNRWA Affairs, Syrian Arab Republic (DUA/SAR) to review the Administration’s decision.”

Applicant’s submissions

12. The Applicant submits the following:
 - (i) she requested to withdraw her resignation before it was accepted; and
 - (ii) she withdrew her resignation twice but the DUA/SAR did not answer, intentionally violating the Agency’s Rules.
13. The Applicant requests that the Tribunal order the Respondent to have her voluntary retirement rescinded.

Respondent’s submissions

14. The Respondent submits that the application is not receivable because:

- (i) there is no appealable discretionary administrative decision;
- (ii) the applicant failed to request administrative review; and
- (iii) the application is time-barred.

15. The Respondent requests that the Tribunal dismiss the application for not being receivable.

Considerations

Main issues

16. *Is there an appealable administrative decision?*

17. The Applicant asserts that “she submitted her resignation and requested to withdraw it before her resignation was accepted.” However, on this issue, which is at the crux of this application, the United Nations Administrative Tribunal in Judgment No. 874, *Abbas* (1998), paragraphs I and III, held that:

... the Tribunal finds that a resignation becomes effective when submitted and does not require the Respondent’s approval to become effective.

* * *

There is no indication that the validity of the resignation is conditioned on acceptance. In addition, if the rule were to require consent in order to make resignation effective, then a staff member who wished to leave would be at the mercy of the Agency which, for either arbitrary or malicious reasons, wished to impede a staff member’s departure.

18. The Tribunal would also like to refer to the United Nations Appeals Tribunal in its Judgment *Maghari* No. 2010-UNAT-039 in a similar case where the staff member submitted a letter of resignation, which was accepted by the Agency in accordance with the rules of early voluntary retirement. The Commissioner-General had refused to allow

the staff member to withdraw his request for early voluntary retirement, and this decision was upheld by the United Nations Appeal Tribunal on the basis that the Agency's refusal to allow a staff member to withdraw a unilateral, voluntary decision to resign did not give rise to an appealable administrative decision.

19. Furthermore the Applicant's decision to take early retirement was a voluntary, unilateral action performed on her own volition and not at the behest of the Respondent. Accordingly, Area Staff Rule 109.2 does not provide for rescission of the voluntary unilateral action of retirement once initiated by a staff member. Consequently, the Tribunal determines that there is no basis for the Applicant's claims, and that there is no administrative decision of the Respondent to be reviewed.

Administrative review

20. After the Applicant filed an appeal with the JAB, the Secretary of the JAB (by letter dated 12 August 2008) requested her to complete an appeal form and to submit attachments "in particular your request letter to the DUA/SAR to review the Administration's decision". There is no evidence in the file that the Applicant requested an administrative review. The Applicant is reminded that she must request administrative review before submitting an appeal to the JAB, as stated under former Area Staff Rule 111.3, in effect at the material time:

1. A staff member who wishes to appeal under the terms of staff regulation 11.1, shall as a first step, address a letter to the Agency's administration requesting that the administrative decision concerned, or the disciplinary action, be reviewed, and setting out his/her reasons for this request.

21. The United Nations Administrative Tribunal has confirmed that administrative review is an essential element of the recourse procedure, noting in Judgment No. 905, *El-Far* (1998), at paragraph III:

... Administrative review under the UNRWA Area Staff Rules is not a mere embellishment or option. It is an integral part of internal procedures and the rules require that it be exhausted. The Staff Rules make administrative review an obligatory internal procedure, and not an optional one nor one that can be waived, except by the Respondent.

22. There is no evidence in the file that the Respondent waived the requirement of former Area Staff Rule 111.3 that the Applicant must first address a letter to the Agency's administration requesting the review of the administrative decision which is the subject of this application.

23. The United Nations Appeal Tribunal, in *Crichlow* 2010-UNAT-035, confirmed that it does not have jurisdiction *rationae materiae* over complaints that were not subject to administrative review, where administrative review was a mandatory step under the relevant staff rules. It also held, in *Costa* 2010-UNAT-036, that the United Nations Dispute Tribunal could not waive time limits for management review or administrative review.

24. The Applicant having failed to comply with the requirement of administrative review under the relevant Area Staff Rules in effect at the material time, the Tribunal finds that the application is not receivable.

Time limits

25. Former Area Staff Rule 111.3, paragraphs 1 and 2, provides that a staff member who wishes to appeal against a decision must first address a letter to the Agency's administration requesting that the decision be reviewed within 30 days of receipt of written notification of the contested decision.

26. The Applicant had until 2 December 2007 to submit a request for administrative review of the 1 November 2007 decision not to approve her request to rescind her request for early voluntary retirement. However, as noted above, the Applicant never submitted a request for administrative review. Instead, she submitted an appeal to the JAB on 20 June 2008, a submission that the Tribunal would like to note is 203 days after the 1 November 2007 decision.

27. The United Nations Administrative Tribunal has consistently reaffirmed the importance of observing the time limits prescribed for the various stages of the appeals process, Judgment No. 1213, *Wyss* (2004), para. V, stating that time limits are of utmost importance for the smooth functioning of any administration and must be interpreted restrictively.

28. The Tribunal determines that the application is time-barred.

Status conference

29. On 21 July 2011, the Tribunal held a status conference, specifically to ask the parties if they have any new relevant evidence to submit in this case.

30. The Applicant, through her counsel who was also present, contends the following:

- (i) there is evidence missing in the file, such as her letter of resignation of 17 November 2007, and her letter of resignation of 2 October 2007;
- (ii) Syrian civil law governs contractual relations between the Applicant and the Respondent, and according to Syrian civil law there has to be acceptance before voluntary retirement becomes effective;
- (iii) the Respondent has fabricated evidence, i.e. the letter of early voluntary retirement.

31. The Respondent contends the following:

- (i) the allegation of fabrication of evidence made by the Applicant is taken seriously and the Respondent rejects it;
- (ii) Syrian civil law is not relevant to this case as the Applicant's terms and conditions of employment are governed exclusively by the UNRWA Area Staff Regulations and Rules and additional relevant issuances;

32. The Tribunal would like to point out that the purpose of the status conference is specifically to allow the parties to present new evidence **relevant** to the case (emphasis added). At the status conference, the Applicant raised new issues which she had not raised when she submitted her original application. Therefore, the Tribunal does not consider them as admissible evidence.

33. However, for the sake of clarification for the Applicant, the Tribunal wishes to draw her attention to the following:

- (i) whether she resigned by letter dated 2 or 21 October (evidence allegedly missing in the file) is not important since the evidence in the file indicates that she resigned by letter dated 26 September 2007;
- (ii) fabrication of evidence is an allegation the Applicant should take seriously and she has failed to submit any evidence in support of her allegation;
- (iii) with all due respect to the laws of the countries where UNRWA staff members are working, the laws governing their relations with the Administration are governed exclusively and solely by UNRWA Staff Regulations and Rules and other relevant issuances.

Conclusion

34. The Tribunal determines that there is no appealable administrative decision, that the application is not receivable, and that it is time-barred.

