



UNRWA DISPUTE TRIBUNAL

Case No.: DT/ SFO /2008/11
Judgment No.: UNRWA DT/2011/003
Date: 31 July 2011
Original: English

Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

FUHEILI

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
W. Thomas Markushewski

Introduction

1. This is an application made by Hamdan Odeh Fuheili (the “Applicant”) against the determination by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), of the separation benefits payable to him upon his retirement from the Agency’s service.

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 the 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 JAB has been submitted to the Commissioner-General.

Facts

4. The Applicant entered the service of UNRWA on a teacher appointment in Dar’a, Syria. He remained in its employment for almost 21 years until he tendered a voluntary resignation, which was accepted and became effective on 3 June 1996.

5. On 16 September 2000, the Applicant was re-employed by reappointment with UNRWA on a fixed-term appointment.

6. On 1 August 2004, he was converted from “Z” to “X” category staff by letter of appointment on a fixed-term appointment.

7. By letter dated 27 December 2006, the Applicant was given an advance written notice of one year of his retirement on grounds of age as he would attain his 60th birthday on 31 December 2007. He was reminded a second time by letter dated 21 November 2007. However, his contract was extended until 5 June 2008 pursuant to Personnel Directive A/9 in order to avoid classroom disruption.

8. The Personnel Action Form issued on 27 May 2008 informed the Applicant of his entitlement to payment of untaken accrued annual leave and Provident Fund benefits, and it also specified that he was not entitled to a termination indemnity because he had not completed ten years of continuous service with the Agency as of the date of his separation.

9. By letter dated 20 August 2008, the Applicant requested payment of a termination indemnity.

10. On 10 October 2008, the Administration denied the Applicant's request, noting that he had not completed ten years of continuous service with the Agency as of the date of his separation and explaining further that this disqualified him from the benefit of Area Staff Circular No. A/3/2008, which equalized retirement benefits between "A" and "X" Category staff.

11. On 15 October 2008, the Applicant filed an appeal seeking payment of a termination indemnity in relation to his retirement.

Applicant's submissions

12. The Applicant submits that:

- (i) the Respondent determined that he was not entitled to additional retirement benefits because he had not completed ten years of continuous service;
- (ii) the Respondent conveyed this decision to him orally;

- (iii) he did not receive retirement benefits after his previous 21 years of service with the Agency, between 1975 and 1996.

Respondent's submissions

13. The Respondent submits that there exists no appealable decision of the Agency to be reviewed by the Tribunal, in other words there is no discretionary administrative decision alleging the non-observance of the Applicant's terms of appointment.

14. The Respondent requests that the Tribunal dismiss the application as not receivable.

Considerations

15. It is important to start by looking at the legal principles in this matter. Area Staff Personnel Directive A/4 Rev.5 ("PD A/4") with respect to the re-employment of Area Staff provides that:

1.1 **Re-employment** means the entry into the Agency's employment of a person who formerly had been employed by the Agency in one of the established manning table categories (A, X, or P) or their earlier equivalents. ... Re-employment may take two forms: re-employment by reinstatement, and re-employment by re-appointment.

1.4 **Reappointment** means re-employment of a former staff member **without restoration of the staff member's previous qualifying service** (emphasis added). The staff member is not required to repay to the Agency the separation payments which he/she received at the time of his/her earlier separation and both his/her entry on duty date and his/her service computation date are the same as the date of his/her reappointment.

16. As for the difference between reinstatement and reappointment, PD/A4 gives the following definitions:

- 2.1 **Reinstatement:** When a former staff member has been unemployed by the Agency for an interval of twelve months or less, his/her re-employment must be by reinstatement.
- 2.2 **Reappointment:** When a former staff member has been unemployed by the Agency for an interval of more than 12 months his re-employment may, at his/her option, be either by reinstatement or by reappointment.

17. The Tribunal is also reminded of the Respondent's following preoccupation:

- 3.2 **Re-employment following resignation.** It is incumbent upon the Agency to control the possible abuse of resignation as a means of obtaining premature access to Provident Fund or other separation payments. Although these are normally payable upon separation at any stage of an employee's working life, they are primarily intended as end-of-career benefits, and the Agency has a moral responsibility to retain their character as such. ...

18. Upon re-employment in September 2000, more than four years after he had resigned from the Agency, the Applicant was reappointed, not reinstated. As indicated above, PD A/4, para. 1.4, clearly states that the former staff member who is being reappointed will be **without restoration of his previous qualifying service** (emphasis added). The Applicant's previous work with the Agency was not qualifying service defined as the total period of continuous employment, as set forth in Area Staff Rule 109.2, para. 6.

19. At the time of the Applicant's 5 June 2008 retirement, Area Staff Circular No. A/03/2008 on Equalizing Retirement Benefits between "A" and "X" Category staff, effective 1 January 2008, provided retirement benefits to staff members with fixed-term appointments, **provided they have 10 years of service at the date of retirement** (emphasis added). In the case at bar, the Applicant did not meet the eligibility criteria for receiving retirement benefits because: a) at the time of his separation the Applicant had a fixed-term contract, which began on 16 September 2000 and was then converted from "Z" to "X" on 1 August 2004 and b) upon expiration of his contract on 5 June 2008, he had less than eight years of qualifying service, i.e. less than the required ten years. Consequently, he did not satisfy the eligibility criteria for receiving retirement benefits, as a Category "X" contract-holder, as set out in above Circular.

20. It is worth noting that the Applicant was not required to - nor did he ever - repay to the Agency the separation benefits he received upon resignation in 1996, as would have been required if he had been reinstated rather than reappointed. The Tribunal finds that the Respondent did not err or breach the terms and conditions of the Applicant's reappointment when deciding that the Applicant was not entitled to termination indemnity upon his separation from the Agency after eight years of service.

21. As for the Applicant's claim that the Agency conveyed its decision to him orally, it is contradicted by evidence in the file. Indeed, by letter dated 10 October 2008, the Deputy Field Administration Officer, UNRWA, Syrian Arab Republic, wrote to him that "in accordance with Para 2 of the circular issued by Director of Human Resources No A/3/2008 dated 21 January 2008, regarding equalization of retirement benefits between A & X, staff members who are appointed at category "X" are eligible for retirement benefits provided they have 10 years of services at the date of their retirements. Therefore, and as you have not completed ten years of continuous service at the date of your separation on 05 June 2008, you are not eligible for retirement benefits." [sic]

22. The Applicant does not "create" an appealable administrative decision by asking for a benefit that is not provided in the relevant Area Staff Regulations and Rules and then complaining when it is denied.

23. With regard to the Applicant's claim that he did not receive retirement benefits after service of 21 years, back in 1996, the Tribunal would like to point out that he was in fact paid all his entitlements in 1996 and did not lodge an appeal at that time, within the applicable time limits. Furthermore, the Tribunal cannot take into consideration his claim on this issue in an application he submitted in 2008 on another matter.

24. The Applicant has failed to challenge a discretionary administrative decision regarding the non-observance of his terms of appointment.

Status conference

25. On 18 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.

26. The Applicant contends that his supervisor had not accepted the withdrawal of his retirement back in 1996 which then “forced” him to leave the Agency, “thus causing him serious prejudice, and that this issue was the crux of the matter”. He also submitted that in 2008, he had requested his contract to be extended for a period of two years but was forced to leave the Agency because of his age.

27. The Applicant failed to present evidence in support of his allegations a) that he requested withdrawal of his voluntary retirement in 1996 and b) that he requested extension of his contract in 2008. Even if he had, he is reminded that he is raising these two issues for the first time at the status conference and they do not constitute, therefore, **new and relevant** evidence (emphasis added) in the case at bar.

Conclusion

28. Given all the above, the Tribunal determines that the application is not receivable. The application is dismissed.

(Signed)

Judge Bana Barazi

Dated this 31st day of July 2011

Entered in the Register on this 31st day of July 2011

(Signed)

Laurie McNabb, Registrar, Amman