



UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/JFO/2009/05

Judgment No.: UNRWA/DT/2011/007

Date: 13 October 2011

Original: English

Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

BADAWI

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 by Rawan Badawi (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 extend her fixed-term appointment with the Agency upon its expiration on 30 September 2009.

2. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board 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 Joint Appeals Board 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 the Joint Appeals Board (JAB) has been submitted to the Commissioner-General.

Facts

4. Effective 27 July 2008, the Applicant joined the Agency as a Social Worker, in Amman, Jordan, on a fixed-term appointment expiring on 31 March 2009, and subject to a probation period of twelve months. The Applicant’s appointment was subsequently extended until 30 September 2009.

5. In the Applicant’s Periodic Evaluation Report (“PER”) for the period commencing 27 July 2008, the Applicant’s performance was rated overall as “[a] staff member who maintains a good standard of efficiency”. Upon completion of her probationary period, the Applicant’s appointment was confirmed on 21 July 2009.

6. In early August 2009, the Applicant was advised that her fixed term appointment expiring on 30 September 2009 would not be extended beyond that date because the ECHO project fund she was working on, along with other social workers, would be exhausted on that date.

7. On 30 August 2009, the Applicant sent a complaint to the Director of UNRWA Operations, Jordan, and requested the Agency to reconsider its decision not to extend her fixed-term appointment. On 30 September 2009, she was separated from the Agency.

8. On 30 September 2009, the Applicant submitted an undated Appeal to the JAB. On 25 October 2009 the Officer-in-Charge, JAB Secretariat advised the Applicant to complete the appeal form and submit all the required documentation related to the appeal.

9. On 2 November 2009, the Applicant submitted an application.

Applicant's contentions

10. The Applicant contends that:

- (i) she was not informed upon signing her contract that her appointment would be for a fixed period or that it would be related to a specific project;
- (ii) she missed several job opportunities as a result of accepting an appointment with the Agency;
- (iii) she made financial commitments expecting her work at the Agency to continue, and without a salary from the Agency, she is unable to meet her commitments;
- (iv) several social workers were appointed after the Applicant's date of appointment and their appointments were not terminated, although the Applicant ranked before them on the waiting list;
- (v) she has suffered negative psychological effects upon receiving her letter of termination.

The Applicant requests the Tribunal to order the Respondent to reinstate her to her former post or, in the alternative, to pay her compensation equivalent to 24 months of salary.

Respondent's contentions

11. The Respondent essentially contends that the non-extension of the Applicant's appointment was properly made, and that the remedies the Applicant is seeking have no legal basis.

Applicant's rejoinder

12. On 14 August 2011, the Applicant submitted a rejoinder of 5 pages (without requesting leave) following the Respondent's Reply of 29 July 2011. In the interest of fairness and comprehensibility, the Tribunal will address it, however, noting that it will not as a general rule review rejoinders which bring nothing new to the case at bar.

13. On 17 August 2011, the Registrar of the Tribunal transmitted a copy of the Applicant's rejoinder to the Respondent providing, "[i]f the Judge deems that a further reply is needed from the Respondent, you will be notified." After reviewing the Applicant's rejoinder, the Tribunal finds that the Respondent's 29 July 2011 Reply adequately addresses all of the Applicant's allegations and therefore, there is no need for any further submissions.

Considerations

Main issue:

Was the non-extension of the Applicant's fixed-term appointment properly made?

14. Looking at the legal and administrative framework applicable in the case at bar, the Tribunal notes that Area Staff Rule 109.5 provides that:

1. A fixed-term appointment shall expire without prior notice on the expiration date specified in the letter of appointment.

15. Area Staff Circular No. 4/95, dated 5 April 1995, on Area Staff posts and appointments, in effect when the Applicant joined the Agency, provides that:

6. Extension of appointments will depend on the Agency's continuing need for the post, the availability of funding and the staff member's performance.

16. The Applicant's letter of appointment, as specifically referenced by the Administration, indicates namely:

3. Tenure of Appointment

This appointment is for a fixed-term starting on 20-7-2008 and expiring on 31-3-2009 [emphasis in original].

* * *

7. Separation from Service

This appointment may be terminated at any time in accordance with the Area Staff Regulations and Rules. In particular:

(a) Should the Agency terminate your appointment after it had been confirmed, you will receive not less than 30 days written notice of such termination.

17. The Applicant's claim that she was not informed, upon signing her contract that the appointment would be for a fixed period of time, is not credible because the information is contained in her letter of appointment.

18. With respect to the expiration of the Applicant's contract, the Respondent inaccurately cites paragraph 7 of the Applicant's letter of appointment, which relates to the termination of appointment. Accordingly, the reference to "termination" of the Applicant's fixed-term appointment has confused the issue of this case. It is no wonder why the Applicant believes she has been terminated, since the Respondent has repeatedly made reference to this clause. However inaccurate the reference, it still does not change the fact that the Agency has the right not to extend fixed-term appointments if certain conditions are not met per UNRWA Regulations, Rules and other relevant issuances.

19. The Tribunal refers to the three conditions enumerated in Area Staff Circular No. 4/95, paragraph 6, above. In the case at bar, two of the conditions for the extension of the Applicant's appointment were met, i.e. the Agency needed the post and the staff member's performance was satisfactory. However, the third condition was not met because funds were no longer available, based on the agreement between UNRWA and the EU.

20. The Applicant submits in her application that confirmation of the successful completion of her probationary period constituted a legal expectancy of renewal or extension. However, the Applicant's letter of appointment indicated that:

4. Probation

Subject to your satisfactory work performance during this probationary period, this appointment shall be confirmed by the Agency in writing.

* * *

8. Special Conditions

This appointment does not carry an expectation of renewal or conversion to any other type of appointment ...

21. The confirmation of the Applicant's fixed-term appointment, acknowledging that she had satisfactorily completed her probationary period, does not create any right to an

extension and should be not be interpreted to create any expectancy of renewal, as confirmed consistently by the jurisprudence. The Tribunal refers in particular to the United Nations Appeals Tribunal Judgments *Koumoin* 2011-UNAT-119, *Syed* 2010-UNAT-061 and *Beaudry* 2010-UNAT-085. The jurisprudence similarly provides that a legal expectancy for renewal is not created by efficient or even outstanding performance, as affirmed in the United Nations Administrative Tribunal Judgment No. 1247, (2005), providing that:

VII. However, it is established jurisprudence that, even where there is no acquired right to renewal of a fixed-term contract, the Tribunal monitors the way the Administration exercises its discretion not to renew a contract. The Tribunal stresses that such monitoring does not concern the substance of the decision, which is a prerogative of the Administration, but only guarantees due process in the broad sense.

22. The Tribunal finds that the confirmation of the Applicant's probationary period did not create any legal expectation of contract renewal or extension beyond the expiration date of her fixed-term appointment, as there was no commitment to extend made by the Agency.

23. In her initial application, the Applicant has not alleged any arbitrariness or capriciousness, prejudice or improper motivation, procedural irregularity, or error of law on the part of the Respondent with regard to the non-renewal of her fixed-term appointment. However, she has raised this issue in the rejoinder, writing that "[t]he decision not to renew my contract was based on extraneous and arbitrary reasons, and resulted from poor management and planning." Since the Respondent has dealt with this issue in his Reply prior to the Applicant raising it in her rejoinder, the Tribunal will not consider it as a new issue and will therefore, now address it.

24. The Applicant is reminded of two principles (1) no new claim can be brought forward in a rejoinder, and (2) the onus of proof with regard to a claim rests with her. In other words, when the Applicant alleges arbitrariness, prejudice, extraneous factors, procedural irregularity or error of law on the part of the Respondent, she must adduce

convincing evidence to substantiate her allegations. The jurisprudence of the United Nations Appeals Tribunal is clear in according the Agency broad discretionary authority in the application of the Agency's Staff Regulations, Rules and other relevant issuances. It provides that the Respondent's discretionary authority will not be disturbed unless the decision was arbitrary or capricious, was motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law, as affirmed in *Assad* 2010-UNAT-021, paragraph 11.

25. The record in the file shows that the Applicant held a fixed-term appointment, that its non-extension was in conformity with applicable Agency Regulations, Rules and other relevant issuances, that the Applicant was informed and that the Respondent's decision was properly based on Area Staff Circular No. 4/95.

26. The Applicant has failed to produce any evidence - convincing or otherwise - that the contested discretionary administrative decision was tainted with arbitrariness, prejudice or extraneous factors, or that it was flawed by procedural irregularity or error of law. Consequently, the Tribunal finds that the Respondent's decision not to renew the Applicant's appointment constituted a proper exercise of his discretionary authority.

27. The Applicant's claims that she missed several job opportunities as a result of accepting an appointment with the Agency and made financial commitments she was no longer able to meet are not a basis for an application, in addition to the fact that there is no evidence in the file showing that she was coerced into accepting the appointment. Applicants are reminded that contracts between the Agency and individuals are voluntary agreements that are freely entered into.

28. With regard to her allegation that other "[s]ocial workers were appointed on dates later after [her] date of appointment and there appointment was not terminated although [she] ranked before them in the waiting list" [sic], she has failed to provide any evidence - convincing or otherwise - to substantiate her allegation or its materiality with regards to the administrative decision not to extend her fixed-term contract.

29. As for the jurisprudence submitted by the Applicant with the rejoinder, the Tribunal finds that it does not contradict its conclusion that the Respondent's decision was properly made. With respect to the Applicant's reference to the ILO Convention 158, Termination of Employment Convention, 1982 [sic], the Tribunal would like - for clarification purposes - to point out that the terms and conditions of the Applicant's appointment are governed solely and exclusively by the Area Staff Regulations and Rules and other relevant issuances as amended by the Agency, and not by the ILO Convention [emphasis added].

Other issues

30. Although the following issues have been brought forward by the Applicant in her rejoinder and not in her initial application, for the sake of clarification, the Tribunal will now address them on an exceptional basis.

31. The Applicant requests that the Tribunal order the production of correspondence between the Human Resources Department and Relief and Social Services Department, "related to my contractual relationship with the Agency from the date of my appointment to the termination of my contract". The Tribunal finds that the Applicant should have raised this in her initial application. Further, the Tribunal finds that the request is over-reaching and vague as the Applicant has failed to provide any explanation as to the relevance of such correspondence. The Tribunal will not be a participant in a fishing expedition through the Agency's files. The Applicant's request is denied.

32. The Applicant mentions that "a settlement was reached between one of the social workers and the Agency. The said social worker agreed to withdraw her appeal in exchange of employment." If the Applicant's purpose in mentioning this settlement, for which she provides no evidence, is to request a settlement between her and the Agency, she is reminded that it is not a basis for an application, and it is not within the jurisdiction of the Tribunal to initiate such settlement.

33. The Applicant claims that “[she is] not, nor [is she] supposed to be familiar with ASC no. 4/95”, adding that “it is neither plausible nor practical to ask candidates to research all Rules, Regulations and ASCs before accepting employment with the Agency.” The Tribunal would like to point out that ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Rules, as affirmed by the United Nations Appeals Tribunal in *Diagne et al.* 2010-UNAT-067.

34. As for the Applicant’s claim that stricter rules should be established in favour of employees in cases of non-renewal, the Tribunal has no jurisdiction to enact new rules and this claim does not constitute a basis for an application.

Is there any legal basis for the remedies sought by the Applicant?

35. The Applicant claims that she has suffered from negative psychological effects upon receiving her letter of separation from the Agency. Although it can understand the Applicant’s disappointment upon receiving notice of the non-extension of her appointment on 5 August 2009, shortly after getting notice of confirmation of her fixed-term appointment on 21 July 2009, the Tribunal takes note that the Applicant has failed to produce any evidence in support of the “negative psychological effects” the letter of separation had on her.

36. The Applicant requests reinstatement or compensation equivalent to 24 months of salary. Given that the non-extension of the Applicant’s fixed-term contract was properly made, that it complied with her letter of appointment and all applicable Area Staff Regulations, Rules and other relevant issuances, and taking due note of the jurisprudence in *Sina* 2010-UNAT-094, paragraph 25, and *Antaki* 2010-UNAT-095 paragraph 20, that compensation will not be awarded “when absolutely no harm has been suffered”, the Tribunal finds that there is no legal basis for the consideration or award of the remedies sought by the Applicant.

Conclusion

37. The Tribunal finds that the Respondent's discretionary authority not to extend the Applicant's contract beyond the expiry of her fixed-term appointment was properly exercised. The application is dismissed in its entirety.

(Signed)

Judge Bana Barazi

Date this 13th day of October 2011

Entered in the Register on this 13th day of October 2011

(Signed)

Laurie McNabb, Registrar, Amman