



UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/SFO/2009/03

Judgment No.: UNRWA/DT/2011/013

Date: 2 November 2011

Original: English

Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

HAMAD

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 Samira Hamad (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 compensate her for the difference between the Provident Fund interest rates on 30 November 2008 and 31 December 2008.

2. Pursuant to General Assembly Resolution 53/253 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 4 November 1967, the Applicant was appointed as an Elementary Teacher in Der’a, Syria. On 30 September 1999, she was separated from service having applied for and been granted early voluntary retirement, pursuant to Area Staff Rule 109.2.

5. On 7 October 1999, the Applicant requested in writing that payment of the balance of her Provident Fund account be deferred for ten years.

6. Pursuant to former Area Staff Rule 106.1, paragraphs 16(D) and (E)(i), the Commissioner-General, by Provident Fund Circular No. PFS/18/2008, dated 3 December 2008, declared the special interest rate for the month of November 2008 to be at -18.49%.
7. On 21 December 2008, the Applicant requested withdrawal of the balance of her Provident Fund account, and it was officially closed as of 30 November 2008.
8. Pursuant to former Area Staff Rule 106.1, paragraphs 16(D) and (E)(i), the Commissioner-General, by Provident Fund Circular No. PFS/19/2008 dated 18 January 2009, declared the special interest rate for the month of December 2008 to be at -15.18%.
9. By letter dated 29 January 2009, the Applicant requested a review of the decision to apply an interest rate loss of 18.49% and a correction by applying the interest rate for December 2008. By email dated 3 February 2009, the Applicant was informed that the interest rate applied to her Provident Fund account upon the withdrawal had been calculated properly.
10. By letter dated 15 February 2009, the Applicant submitted an appeal to the JAB. By letter dated 8 March 2009, she was requested to file her appeal in English and to complete the required documents.
11. By letter dated 15 March 2009, the Applicant requested a review of the administrative decision to apply the interest rate of the month of November 2008 to the balance of her Provident Fund account and compensation for the difference between the interest rate on 30 November 2008 and 31 December 2008.
12. By letter dated 26 March 2009, the Director of UNRWA Affairs, Syria (“the DUA/S”) rejected the Applicant’s requests.
13. On 1 April 2009, the Applicant submitted an application.

Applicant's contentions

14. The Applicant contends that:

- (i) when she requested on 21 December 2008 to withdraw the total credits of her Provident Fund account, the Provident Fund Secretariat applied the interest rate for November 2008 (-18.49%) instead of the interest rate for December 2008 (-15.18%) and therefore she lost USD 4,000.00;
- (ii) she collected the cheques on 4 January 2009 and consequently, the interest rate for December 2008 should have been applied;
- (iii) no one from the Finance Department informed her that the interest rate to be applied to her Provident Fund would be the interest in effect on 30 November 2008, and according to international banking regulations, the Agency should have applied the interest rate in effect on 4 January 2009, which is the date she collected her cheques.

15. The Applicant requests that the Tribunal order the Respondent to pay her compensation in the amount of USD 4000.00 for the loss "caused" by the Agency.

Respondent's contentions

16. The Respondent essentially contends that the application is not receivable as no discretionary administrative decision was effected by the Agency, and denies each and all of the Applicant's pleas. The Respondent requests that the Tribunal dismiss the application.

Considerations

Main issue

Is there an appealable administrative decision?

17. In order to address the issue of whether there is a discretionary administrative decision, i.e. alleging the non-observance of the Applicant's terms of appointment, it is important to look at the legal and administrative framework upon which this case is based.

18. Area Staff Rule 109.10, paragraph 2, on Provident Fund Benefits provides that:

2. A staff member who is a participant in the Provident Fund shall, upon separation from the Agency's service and subject to the provisions of paragraphs 3 and 5 of this rule, be paid Provident Fund benefits as follows:

- (A) A staff Provident Fund benefit equal to the balance of staff credits in his/her account current to the date of separation; and
- (B) an Agency Provident Fund benefit equal to the balance of Agency credits in his/her account current to the date of separation.
- (C) Interest at rates as provided for in rule 106.1 paragraph 16.

19. Former Area Staff Rule 106.1, paragraph 16, on the Allocation of Investment Income to Participants' Accounts provides that:

- (E) The Commissioner-General shall also declare and cause to be published each month a special interest rate to be applied to the accounts of separating participants in the manner described below:

* * *

- (ii) The last published special interest rate shall be applied to a separating participant's account for the period between the first day of the year immediately following the year covered by the last declared

interest rate under (A) above, up to and including the month immediately preceding payment.

- (iii) The foregoing provisions shall also apply mutatis mutandis:

* * *

- (2) To balances remaining in individual Provident Fund accounts in accordance with paragraph 5(B) of this rule, equating the year of cessation of participation with that of final withdrawal of the total balance in an individual account.

- (F) The interest rates referred to above may be positive, nil or negative, depending on the assessment of investment performance.

20. While noting that the Provident Fund rates are calculated monthly, the Tribunal finds that there is no rule or term of employment which provides that a special interest rate be applied other than the last published interest rate in effect at the time a staff member applies to withdraw from the Provident Fund.

21. Indeed, on 21 December 2008, the Applicant submitted her application to withdraw the balance of her Provident Fund account. The Agency then calculated the Applicant's payout by applying above Area Staff Rule 106.1, paragraph 16(E) above. It is to be noted that the last published special interest rate in effect on 21 December 2008 was the special interest rate for November 2008, as published on 3 December 2008 in the Provident Fund Secretariat Circular No. PFS/18/2008.

22. The Applicant is reminded that upon submitting her application requesting deferral of the payment of the balance of her Provident Fund account for ten years, she agreed to the following terms:

2. I further understand and agree that during the period of deferral above:

* * *

- c) All sums in my account shall be held in accordance with the Area Staff Rules as may be amended from time to time, in the very same manner as for active staff members, including ploughback of any exchange rate movements and interest.

23. If the Applicant is contesting the manner by which the Provident Fund Secretariat calculated the balance of separating participants, she is reminded that this does not constitute an administrative decision as defined by Area Staff Regulation 11.1 and as such, the Tribunal finds that it does not fall within the scope of its jurisdiction as an administrative decision alleging the non-observance of the Applicant's terms of appointment.

24. The Applicant is reminded that one does not create an appealable administrative decision by asking for a benefit that is not provided for in the relevant Area Staff Regulations and Rules, and then complaining when it is denied. Rather, an appealable administrative decision arises in the application of the Staff Regulations and Rules and other relevant issuances.

Other issues

25. The Applicant claims that the Agency caused her a financial loss. However, the Tribunal notes that the date on which she collected the cheques disbursing her Provident Fund benefits (4 January 2009) is irrelevant for the purpose of calculating the applicable interest rate. Indeed, the Applicant requested on 21 December 2008 to withdraw her Provident Fund benefits, the cheques were made available to her on 22 December 2008, and they correctly reflected the applicable interest rate in accordance with Area Staff Rule 106.1, paragraph 16, above.

26. The Applicant makes various references to unspecified "international bank regulations" and to vague "international law". Whatever they may be, they have no

applicability and are not relevant to this case as the Applicant's terms and conditions of employment are governed solely and exclusively by the Agency's Area Staff Regulations and Rules and other relevant issuances as amended by the Agency, including those relating to the Provident Fund and payments upon withdrawal and the applicable interest rates. [Emphasis added]

27. The Applicant claims ignorance of the Area Staff Regulations and Rules. 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 Appeal Tribunal in *Diagne et al.* 2010-UNAT-067.

Conclusion

28. Given all the above, the Tribunal determines that there is no appealable administrative decision. The application is dismissed in its entirety.

(Signed)

Judge Bana Barazi

Dated this 2nd day of November 2011

Entered in the Register on this 2nd day of November 2011

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman