



**UNRWA DISPUTE TRIBUNAL**

Case No.: UNRWA/DT/SFO/2009/01

Judgment No.: UNRWA/DT/2011/015

Date: 3 November 2011

Original: English

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**Before:** Judge Bana Barazi

**Registry:** Amman

**Registrar:** Laurie McNabb

ALFOUT

v.

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

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
W. Thomas Markushewski

## **Introduction**

1. This is an application by Omar Othman Alfout (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 his request to withdraw his resignation and be transferred to another department.

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 21 August 2004, the Applicant accepted a fixed-term appointment, category “X”, for three years, expiring on 31 August 2007, in the Microfinance & Microenterprise Programme’s Branch in Damascus, Syria. His contract was subsequently extended until his resignation effective 8 October 2008.

5. On 25 June 2007, the Applicant was informed that effective 1 July 2007, he would be transferred with promotion to another post as Area Loan Supervisor, and on 6 August 2008, his transfer was confirmed.

6. On 5 October 2008, an investigation report concluded that the Applicant had engaged in misconduct. By memorandum dated 8 October 2008, the Applicant tendered his resignation, effective immediately.

7. On 15 October 2008, he was informed that his resignation had been approved, effective 8 October 2008.

8. By memorandum dated 16 October 2008 to the Director of UNRWA Affairs, Syria (“DUA/S”), the Applicant requested withdrawal of his resignation and transfer to another department.

9. By letter dated 5 November 2008, the DUA/S informed the Applicant that “the Agency is not in a position to accede to [his] request.”

10. On 25 November 2008, the Applicant sought reconsideration of the decision. On 1 December 2008, he was informed that the “decision is definitive and final”.

11. On 28 December 2008, the Applicant submitted an appeal to the JAB, and was advised early in January 2009 by the JAB Secretariat to complete his forms in English and submit all the required documents.

12. On 20 January 2009, the Applicant submitted his application.

#### **Applicant’s contentions**

13. The Applicant contends that he resigned under pressure by his managers, and that he was not aware of the rules. He requests that the Tribunal order the Agency to reinstate him.

#### **Respondent’s contentions**

14. The Respondent essentially contends that no appealable administrative decision has been presented. However, if the application is receivable, the administrative decision

has been properly made. The Respondent requests that the Tribunal dismiss the application.

## **Considerations**

### *Main issue*

#### *Is there an appealable administrative decision?*

15. The question to ask is whether an administrative decision, i.e. alleging the non-observance of the Applicant's terms of appointment, has been made.

16. In order to address the question, it is important to look at the legal and administrative framework governing resignation.

17. Area Staff Rule 109.6 provides that:

1. A staff member resigns who gives to the Agency a written notice of resignation as required under paragraphs 2 and 3 below. A resignation as here defined is always initiated by a staff member.

#### NOTICE OF RESIGNATION

2. A staff member who resigns shall give to the Agency:
  - (A) Such period of notice as is provided for in his/her letter of appointment; or
  - (B) if no such period of notice is specified therein, not less than 14 calendar days' notice; or
  - (C) such other period of notice as the Commissioner-General may at his discretion accept.
3. Every notice of resignation shall contain a written statement of the staff member's decision to resign, shall be signed by the staff member

and shall specify the date on which he/she proposes that his/her resignation should take effect.

18. Regarding administrative decisions which cannot be the subject of an application or an appeal because they do not affect a specific staff member's terms of appointment, the United Nations Appeals Tribunal affirmed in *Andati-Amwayi* 2010-UNAT-058, paragraph 18, that:

In other instances, administrative decision might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

19. The Agency, as per the Area Staff Regulations, Rules and other relevant issuances, has no obligation to accept a request for withdrawal of resignation, once tendered, just as no right of rescission exists in the Applicant's conditions of appointment. 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 none provides for rescission of a resignation decision.

20. Noting that the Applicant's resignation was a voluntary unilateral action which he initiated, the Tribunal is guided by the jurisprudence of the United Nations Appeals Tribunal in *Maghari* 2010-UNAT-039. This is a similar case where the Commissioner-General's decision not to allow a staff member to withdraw his request for early voluntary retirement was upheld by the United Nations Appeals 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.

21. As it was the Applicant's voluntary and unilateral decision to leave the Agency's service by resignation, rather than the Respondent's decision to terminate his appointment in the interest of the Agency, the Tribunal finds that there exists no appealable administrative decision in the case at bar, i.e. the application is not receivable.

22. For clarification purposes, with respect to re-employment following resignation, a request made by the Applicant, the Tribunal refers to Area Staff Personnel Directive A/4/Part VI, paragraph 3.2 which provides that:

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. The reappointment of former staff who have resigned should, therefore, be carefully considered, and should not normally be approved unless there is a clear element of Agency interest in obtaining the former staff member's services again.

23. In this instance, the Applicant submitted his resignation following the release of an investigation report dated 5 October 2008, which stated that the Applicant had engaged in misconduct. The Tribunal finds that it is within the proper exercise of the discretionary authority of the Respondent to decline to accept the Applicant's request to withdraw his resignation, especially in the absence of a clear element of the Agency's interest in re-employing him. The Tribunal also notes that the Applicant has not at any time contested the substantive findings of misconduct.

*Other issues*

24. The Applicant claims ignorance of the Area Staff Regulations and Rules. The Applicant is reminded 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.

## Conclusion

25. Given all the above, the application is dismissed in its entirety.

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*(Signed)*  
Judge Bana Barazi

Dated this 3<sup>rd</sup> day of November 2011

Entered in the Register on this 3<sup>rd</sup> day of November 2011

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*(Signed)*  
Laurie McNabb, Registrar, UNRWA DT, Amman