EL SALOUS

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Anna Segall
Introduction

1. This is an application by Mohammed El Salous (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 his approved period of Special Leave Without Pay.

Facts

2. On 23 September 2001, the Applicant entered the service of UNRWA under a fixed term appointment as Project Development Officer, Relief and Social Services Department (“RSS”) at the Field Office in Amman, Jordan.

3. After several transfers and promotions, the Applicant applied for and was selected to the post of Microcredit Community Support Programme Specialist, Grade 17, Step 1 in RSS, at the Agency Headquarters in Amman, effective 1 September 2010.

4. On 12 December 2010, the Applicant formally requested the Agency to approve a Special Leave Without Pay (“SLWOP”) for the period 9 January 2011 to 10 March 2011 in order to work at a microfinance institution in India.

5. By letter dated 4 January 2011, the Human Resources Officer communicated to the Applicant the Agency’s approval in accordance with Area Staff Personnel Directive No. A/5, Part II, Paragraph 1.4.10 “Work with Other Organizations”, indicating that the special leave will be as follows:

   Annual Leave: from 09 January 2011 to 02 February 2011

   SLWOP: from 03 February 2011 to 12 March 2011.

The Applicant acknowledged the above and started his functions with the microfinance institution in India.

6. By email dated 8 February 2011 to the Applicant, the President/CEO of Development Innovations Group (“DIG”), the company the Applicant was working for, proposed the following:
Pursuant to your confirmation of interest and availability, DIG would like to extend your contract until August 31, 2011.

7. By email dated 12 February 2011 to the Chief, Social Services Division (“CSSD”), the Applicant requested an extension of his SLWOP until 31 August 2011, i.e. for 5 months and 20 days more.

8. By email dated 21 February 2011, the CSSD communicated to the Applicant the Agency’s decision not to extend his SLWOP, forwarding to the Applicant an email also dated 21 February 2011 which she had received minutes earlier from the Director of Relief and Social Services (“DRSS”). In this email, the DRSS explained to the CSSD why the Applicant’s request for an extension of SLWOP could not be granted. In relevant part, the DRSS pointed out that:

… RSS has not been given sufficient advance opportunity at a very critical time to make alternative arrangements for a replacement equivalent to Mohammed’s skill, knowledge and experience levels. It is vital in my view that Mohammed be present to guide the Social Performance review/follow-up from beginning to end… RSS is moving forward on reforms which require full participation of all its staff and I see Mohammed as a critical and valuable part of that process and the results which will be achieved.

9. By email also dated 21 February 2011, the Applicant requested the DRSS to reconsider her decision, suggesting instead an extension of approximately 3 months:

Maybe the period requested is [a] long one, till end of August, but I will highly appreciate if you can give me another chance till end of May 2011 [sic], …

10. By email dated 22 February 2011, the DRSS replied to the Applicant confirming again the Agency’s decision and noting inter alia:

Unfortunately the consultancy firm that engaged you was either not truthful, or grossly underestimated the time period needed in India to carry out the merger, which has now put all of us in an uncomfortable situation…

Again, I am very sorry to have to take the position I am taking, but I feel it is essential we have access to your good talents.
here at HQ and that the agreement which was made with us in good faith before your departure is kept.

11. By letter dated 9 March 2011, the Applicant advised the CSSD of his decision to resign from his post effective 13 March 2011. The Agency accepted his resignation and communicated its acceptance to the Applicant on 21 March 2011.

12. By email dated 21 March 2011, the Applicant requested the DRSS (copy to the Director of Human Resources at Headquarters, Amman) to reconsider her decision not to extend his SLWOP until 31 August 2011, under the subject heading “Decision Review – Extension”, noting *inter alia*:

I have asked at the beginning for two month leave, one month of is SLWP [Special Leave Without Pay], after short period of time. I have the chance to get an extension in this company, for certain period. And I believe as a member of the RSSD and have served this programme for several years, I am in position to ask for this privilege, and take chance as others took [sic].

13. By email dated 21 March 2011, the DRSS confirmed to the Applicant her decision not to extend his SLWOP, noting *inter alia*:

When you requested an extension of a further five months after you were in India, it was felt this was not in the interests of RSS, as two critical reforms you initiated are slated for roll-out in the next several weeks...The need for you to be in the office to shepherd this through was explained by me in an email to you February 22. For personal and professional reasons you chose not to return to the office as expected and instead tendered your resignation, reference your letter of March 9 to CSSD, effective March 13.

14. On 11 April 2011, the Applicant submitted his application to the UNRWA Dispute Tribunal (the “Tribunal”). It was received by the Registry on 12 April 2011.

15. By email dated 14 April 2011, the Applicant reiterated his request for decision review, however addressing it this time to the Director of Human Resources. At the bottom of his email, as *nota bene*, the Applicant indicated the following:
N.B. Kindly be informed that [I] have submitted, [a] Decision letter review on 21.[M]arch.2011 to D/RSSD, and [I] have copied you, but after reviewing the instructions, [I] have figured out that it should [have been] sent to you directly not to D/RSSD., so [I] sent it now for correction [sic].

16. By email dated 14 April 2011 to the Applicant, the Human Resources Officer (Appeals & Grievances) acknowledged receipt of his request for decision review and informed him that the request was being transmitted to the Deputy Commissioner-General (“DCG”).

17. By email dated 16 May 2011, the DCG responded to the Applicant’s request for decision review advising him, inter alia, of the following:

* * * 

I conclude that the decision not to grant your request for an extension of SLWOP was made in full accordance with the Agency’s Regulations and Rules, particularly with respect to the provisions of PD A/5, Part II. SLWOP to work with other organizations is not a right, but is instead a discretionary benefit that may be approved subject to, inter alia, the operational needs of the Agency (See PD A/5, Part II, Section 1.4.10). The authority to approve or deny requests for SLWOP is delegated to Department Heads, who must assess staff requests in light of the prescribed factors. Therefore, the decision regarding your request for an extension was within the discretionary authority of the Director of Relief and Social Services (DRSS), who determined that the operational needs of the Relief and Social Services Department would be unduly affected by your absence if your SLWOP were extended. Accordingly, your request was not granted and you were expected to return to your post with UNRWA after the expiry of the initially agreed upon return of SLWOP.

I further conclude that the Agency’s established procedures with respect to SLWOP to work with other organizations were correctly followed through DRSS’s decision not to grant your request for an extension of your SLWOP. I note that your initial request for SLWOP to work with another organization was granted for the period 9 January 2011 through 12 March 2011. When denying your subsequent request for a five-month extension of your SLWOP, DRSS provided you with a reasonable and detailed justification for her decision in writing.
18. On 6 February 2013, the Respondent filed his reply.

Applicant’s contentions

19. The Applicant contends the following:

   (i) based on his performance, the company in India asked him if he would extend his contract for another 5 months and “anyone like to have a chance to improve his career and even improve his financial position [sic]”;

   (ii) it is his right to have SLWOP, his direct supervisor [CSSD] had approved his request for an extension of SLWOP;

   (iii) the DRSS rejected his request for an extension of his SLWOP in a “very unjustifiable way”;

   (iv) he was forced to submit his resignation in “certain time”;

   (v) he has been subjected to a “kind of discrimination”.

20. The Applicant requests that the Tribunal order the cancellation of his resignation and the extension of SLWOP until 31 August 2011.

Respondent’s contentions

21. The Respondent submits that:

   (i) the Applicant’s request for an extension to his approved period of SLWOP was rendered moot and non-receivable by the Applicant’s unilateral resignation;

   (ii) the Agency’s discretionary decision not to grant a five-month extension to the Applicant’s SLWOP upon his request was properly made, if the Tribunal were to find that the application is receivable.

22. The Respondent requests that the Tribunal dismiss the application.
Considerations

Preliminary Issue

23. As stated above, the Respondent filed his reply on 6 February 2013. In his reply to the application, the Respondent requested leave from the Tribunal to take part in the proceedings.

24. Article 30 of the Rules of Procedure of the Tribunal gives the authority to the Tribunal to shorten or extend time limits fixed by the Rules or to waive any rule\(^1\) when the interests of justice so require. Pursuant to Article 14 of the Rules, the Tribunal may make any order or give any direction which appears to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties. It is the Tribunal’s belief that submissions from both parties will better equip the Tribunal to render a fair and comprehensive judgment. The Tribunal finds that it is in the interest of justice – and it would be appropriate for a fair and expeditious disposal of the case, and would do justice to the parties – for the Tribunal to extend the time limit under Article 6 and accept the late filing of the Respondent’s reply rather than exclude a party on a procedural basis. Therefore, the Tribunal accepts the Respondent’s reply.

Main Issues

Is there an appealable administrative decision?

25. The question to ask is whether an administrative decision, i.e. alleged to violate the Applicant’s terms of appointment, has been made.

26. Area Staff Regulation 9.2 provides that:

   Staff members may resign from the Agency upon giving the Commissioner-General the notice required under the terms of their appointment.

27. With regard to resignation, Area Staff Rule 109.6 provides the following:

\(^1\) The Tribunal notes the exception of decision review per Article 8 of the Statute of the UNRWA Dispute Tribunal which states: “The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review”.
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.

28. Finally, Area Staff Personnel Directive A/9 provides that:

   The Director of Human Resources in respect of Headquarters and Field Office Directors in respect of staff in their Fields...are authorized to act on behalf of the Commissioner-General and the Agency on matters arising from the implementation of Staff Rule 109.6; they may delegate these powers.

29. 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. Noting that (i) the Applicant’s resignation was a voluntary unilateral action which the Applicant initiated, and (ii) the Applicant has failed to provide any evidence that he was forced to resign or that he was subjected to discrimination, the Tribunal remains 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.
30. In *Maghari, supra*, at paragraph 22, the United Nations Appeals Tribunal held:

   The Tribunal is satisfied that the Applicant’s appointment by the Agency ended because the Applicant had applied for early voluntary retirement and because that application had been accepted, and not because of the Respondent’s decision to terminate the Applicant’s appointment in the interest of the Agency…Since Applicant’s appointment was terminated by his voluntary action rather than as the result of any wrongful act of the Respondent, there is no basis for the Applicant’s claims and all relief sought is refused.

31. Pursuant to Article 21.1(a) of Area Staff Regulation 11.3, the Tribunal’s competence is limited to adjudication of administrative decisions resulting in non-compliance with the terms of appointment or contract of employment of the staff member, including all pertinent Regulations and Rules and all relevant administrative issuances in force at the time of the alleged non-compliance. In the case at bar, as evidenced in the record, the rescission of the Applicant’s voluntary and unilateral decision to resign is not part of the Applicant’s terms of appointment or contract of employment, and Area Staff Rule 109.2 does not provide for such rescission. The Tribunal finds that there exists no appealable administrative decision in the case at bar, i.e. the application is not receivable.

32. Furthermore, the Applicant’s voluntary and unilateral resignation effective 13 March 2011 rendered moot the Applicant’s own request to have the Agency extend his approved period of SLWOP from 13 March 2011 to 31 August 2011. As held by the former United Nations Administrative Tribunal in Judgement No. 991, *Shamsi* (2001), Paragraph I, the Tribunal finds that the application:

   …should be regarded as moot or otherwise so devoid of reality that it would not be appropriate to seek to determine the principal issue raised…

33. Consequently, the Tribunal finds that the application is not receivable *ratione materiae*. 
Conclusion

34. In view of the foregoing, the application is dismissed.

Signed
Judge Bana Barazi
Dated this 8th day of May 2013

Entered in the Register on this 8th day of May 2013

Signed
Laurie McNabb, Registrar, UNRWA DT, Amman