AUDEH

v.

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

JUDGMENT

Counsel for Applicant: Diab Tabari

Counsel for Respondent: Anna Segall
Introduction

1. This is a judgment on the preliminary question of receivability.

2. The first question for the Tribunal to consider is whether or not it has jurisdiction to consider the application of Mirna Audeh (the “Applicant”), a former staff member at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the “Agency”), regarding the failure on the part of the Agency to reinstate her to her former position from which she had resigned a year previously and whether the removal of her name from a promotion roster was a lawful exercise of power and discretion vested in the management concerned.

Facts

3. With effect from 14 October 1996 until her resignation on 5 November 2011 the Applicant was employed as a teacher. At the time of her resignation the Applicant held the post of teacher in English at Beit Jala Preparatory School on a fixed-term appointment that had been extended until 30 June 2014.

4. On 18 October 2011, the Applicant submitted her resignation for no other reason than that of her personal circumstances at the time. Her resignation was accepted and took effect on 5 November 2011.

5. Events had not worked out as the Applicant had anticipated in the United Arab Emirates. On 14 June 2012, she made an enquiry by e-mail about the possibility of returning to her job in UNRWA.

6. By an e-mail letter dated 27 June 2012, Natalie Burton, the Field Human Resources Officer, Lebanon (“FHRO/L”), informed the Applicant of the relevant Personnel Directive No. A/4 in accordance with which re-employment was not automatic and that the Applicant would have had to take part in a competitive recruitment exercise adding that the recruitment exercise for the post of English teacher had just been concluded. In the circumstances she should consider applying for vacancies in the future.
7. On 8 November 2012, the Applicant requested a review of the decision. She also raised for the first time an objection to the fact that her name was removed from the promotion roster following her resignation.

8. By e-mail dated 14 November 2012, Ann Dismorr, the Director of UNRWA Affairs, Lebanon, upheld the decision not to re-employ her and informed her that re-employment was not an entitlement.

9. She was encouraged to apply for any future vacancy. She was also informed that since she was no longer employed by the Agency it was not possible to maintain her name on the list of internal staff eligible for promotion.

10. On 14 December 2012, the Tribunal received her application.

The Law

11. An essential prerequisite for filing a claim with the Tribunal is that the staff member must have made a request for a review of the administrative decision within 60 calendar days from the date of receipt of notification of the decision being challenged. The relevant legal provisions are set out in full so that the Applicant will understand the legal requirements which preclude the Tribunal from considering the substantive merits of her application.

12. Area Staff Rule 111.2 provides:

**DECISION REVIEW**

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

   (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and
   (B) in the case of staff members of Headquarters, to the Director of Human Resources.

* * *

Page 3 of 5
3. A staff member shall submit a request for a decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

13. Article 8(3) of the Statute of the Tribunal provides:

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend, waive or extend the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.

Considerations

14. It is clear from the facts at paragraph 7 above that the Applicant did not submit a request for decision review within the time limit of 60 days as required under Area Staff Rule 111.2. In the circumstances the Tribunal does not have jurisdiction to consider this aspect of the complaint.

15. The complaint regarding the removal of the Applicant's name from the list of candidates approved for promotion lacks merit. In the first place her name was removed upon her resignation which took effect on 5 November 2011. Accordingly, she lost any entitlement to be considered as an internal candidate when a post as English teacher became vacant at her previous school. Even if the Applicant was eligible for consideration she did not ask for a review of the decision within the 60 day time limit as required.

Judgment

16. The application is dismissed in its entirety.
Comment

17. The Applicant, who is an experienced English teacher with an apparently satisfactory record of employment, is well advised to follow the guidance offered to her by the FHRO/L and monitor the vacancy announcements on the Agency’s website.

(Signed)

_________________________
Judge Goolam Meeran
Dated this 10th day of June 2013

Entered in the Register on this 10th day of June 2013

(Signed)

_____________________________________
Laurie McNabb, Registrar, UNRWA DT, Amman