MAHFOUZ

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. Dr. Safi Mahfouz (the “Applicant”), a staff member at the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), appealed UNRWA’s decision to deny him Special Leave with Full Pay (“SLWP”) or Special Leave with Partial Pay (“SLWPP”) to conduct postdoctoral research in the United States.

Facts

2. On 1 November 1992, the Applicant commenced employment with the Agency on a Temporary Indefinite Appointment as a Teacher “D” at Beqaa Camp Elementary Boys School No. 2, North Amman, Jordan. Following several promotions, the Applicant was occupying the post of Associate Professor – Modern American Literature at the Faculty of Educational Sciences and Arts (“FESA”) at the time material to the events relating to the Application.

3. By memorandum dated 17 October 2011, the Applicant informed the Field Human Resources Officer, Jordan (“FHRO/J”) that he had been awarded “the 2012-2013 Fulbright Visiting Scholar (Post-Doctoral) Research Grant” and that he had received a letter of invitation from the Provost Office at the City University of New York and the Martin E. Segal Theatre Center to conduct postdoctoral research on American drama and theater during the academic year 2012-2013. The Applicant requested leave with full pay during the proposed research period “so as to cover my family expenses in Jordan during my stay in the United States.”

4. By memorandum to the Director of UNRWA Operations, Jordan (“DUO/J”) dated 30 November 2011, the Applicant reiterated his request for leave with full pay during the research period, citing provisions of Personnel Directive A/5 and A/17 in support of his request. The Applicant also noted:

   I would like to bring it to your notice that some UNRWA staff who obtained graduate scholarships were given leave with full pay for one year, and my case is not exceptional though it is a scholarship
for a postdoctoral degree…my Fulbright post doctorate scholarship is not a kind of training, but is rather a study leave scholarship leading to obtaining a postdoctoral degree.

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…my study leave is essential for meeting the requirements of the Accreditation Commission of the Ministry of Higher Education and Scientific Research which stipulate that there has to be in the English Department a professor who has graduated from an English speaking country. In addition, this study leave will also reflect positively on my students’ learning in the English Department at FESA.

The Applicant noted that he had been advised by the Dean, FESA to resubmit his request as a request for leave without pay. However, the Applicant stated:

Financially, I cannot manage to take a leave of absence from my job at FESA without pay since the Fulbright postdoctoral scholarship grant will only cover university tuition fees, and accommodation and there are no financial liabilities on the part of the City University of New York.

5. By memorandum to the DUO/J dated 8 March 2012, the Applicant noted that he had not yet received a response to his request for leave and repeated the content of his previous memoranda. The Applicant concluded by requesting “sabbatical leave with full pay during the research period or if not possible …special leave with partial pay…”

6. By letter dated 10 April 2012, the Acting Director of UNRWA Operations, Jordan (“ADUO/J”) rejected the Applicant’s request for SLWP or SLWPP noting that:

The principle of approving the Special Leave whether with full pay or partial pay as per the PD A/5 is the same, and it was responded to your letter dated 17 October 2011 by the Acting Field Human Resources Officer through the Dean, FESA on 8 November 2011, copy of which is attached of easy reference.

Your request has been thoroughly reviewed by all concerned and concluded that your request can not be accommodated as there are no available fund to cover this request pursuant to PD A/17 paragraph 3.3…
The Applicant states in his application that he was verbally informed of this decision by the Dean, FESA on 25 April 2012 and that, upon his request to Jordan Field Office staff, he received a copy of the ADUO/J’s letter on 6 June 2012.

7. By memorandum to the Deputy Commissioner General (“DCG”) dated 22 May 2012 and resent on 11 June 2012 and 2 August 2012, the Applicant requested review of the decision rejecting his request for SLWP or SLWPP. The Applicant reiterated the information and arguments that he had set out in previous memoranda and added:

The other Fulbrighters from public universities, who have been awarded the scholarship, were given leave with full pay on account that they have the academic rank of Associate Professor…It is stated in Article 14 of the Legislations at the University of Jordan, which are applicable to all Jordanian universities, that “any Associate Professor is eligible for a one year sabbatical leave with full pay for study, conducting research or working as a visiting scholar at any university in any country in the world.”…I find it so strange why UNRWA…does not recognize my eligibility to such a right given to my colleagues at other Jordanian public universities.

8. By memorandum to the FHRO/J dated 7 August 2012, the Applicant requested Special Leave Without Pay (“SLWOP”) during the research period from 10 September 2012 until 10 May 2013. The Applicant formally requested SLWOP on the same date using the appropriate form. The Applicant’s request was approved on 8 August 2012.

9. On 15 August 2012, the Tribunal received an application from the Applicant contesting the decision to deny his request for SLWP or SLWPP. On 1 October 2012 the application was transmitted to the Respondent.

10. The Respondent filed his reply on 31 October 2012. The reply was transmitted to the Applicant on 4 November 2012.

11. On 9 January 2013, the Tribunal received from the Applicant a request for expedited hearing of his case dated 8 January 2013. By Order No. 001 (2013) dated 20 January 2013 the Tribunal denied the request.
Applicant’s contentions

12. The Applicant contends that:

(i) “…Article 14 of the Legislations at the University of Jordan, which are applicable to all Jordanian universities [provides] that ‘any Professor is eligible for a one year sabbatical leave with full pay for study, conducting research or working as a visiting scholar at any university in any country in the world’. Sabbatical leave granted to an Associate Professor working at any public university in Jordan is also endorsed by the Ministry of Higher Education and scientific Research.”

(ii) “This unjust administrative decision is allegedly in non-compliance with the terms of appointment or contract of employment of any Associate Professor at any public university in Jordan or in any country in the world.”

(iii) “…obtaining a postdoctoral degree in American literature…will be of great benefit to students of the English Department at FESA and in the interest of the Agency since this will help the department comply with the criteria of the Accreditation Commission of the Ministry of Higher Education and Scientific Research which stipulate that there has to be in the English Department a professor who has graduated from an English speaking country.”

(iv) “Financially, I cannot manage to take a leave of absence from my job at FESA without pay since the Fulbright scholarship grant will only cover university tuition fees and accommodation and there are no financial liabilities on the part of the City University of New York.”

(v) “Some UNRWA staff who obtained graduate scholarships were given leave with full pay for one year; to mention one case is the Administrative Officer at the ATC.”

(vi) Personnel Directive A/5 states that special leave with full pay may be approved where the Applicant has a scholarship to study at an advanced level and Personnel Directive A/17 states that such leave may be granted where it will improve the quality of the services available to the Agency.

13. The Applicant requests the Tribunal to order:

(i) Sabbatical leave with full pay;

(ii) Retrospective reimbursement “as if [he] is fully paid during [his] study leave”; and

(iii) Compensation for all damages.
**Respondent’s contentions**

14. The Respondent contends that:

   (i) “Pursuant to PD A/5 Special Leave may be approved with full pay or partial pay or without pay on any grounds that are deemed appropriate and justified by the responsible authority.” In this case, the rejection of the request for SLWP was justified on the basis that there were no funds available to cover leave with pay.

   (ii) The Fulbright award that the Applicant received was initiated by the Applicant and not the Agency. The program therefore fell within category “B” courses as defined in Personnel Directive A/17 and “pursuant to paragraph 5.2.1 of Personnel Directive A/17 the Agency was obliged to place the Applicant on SLWOP.”

   (iii) The Applicant’s suggestion of discrimination has no basis. The specific case referred to by the Applicant was decided in 2007 when funding was available.

   (iv) The terms and conditions of the Applicant’s employment with the Agency are exclusively set out in the Applicant’s letter of appointment and the Agency’s Area Staff Regulations Rules (and administrative issuances pursuant to them). The “legislations at University of Jordan” which the Applicant refers to have no applicability.

   (v) The relief sought by the Applicant has no legal basis.

15. The Respondent requests the Tribunal to dismiss the Application in its entirety.

**Considerations**

*Legal and administrative framework*

16. Area Staff Regulation 5.2 states that:

   Special Leave may be authorized by the Commissioner-General in exceptional cases.

17. Area Staff Rule 105.2(1) provides that:

   Special leave with full or partial pay or without pay may be granted in the interests of the Agency in cases of extended illness, or for
other exceptional reasons, for such period as the Commissioner-General shall prescribe.

18. Personnel Directive A/5/Rev.6, Part II, entitled “Special Leave” states:

1. POLICY

1.1 Special leave may be approved, with full or partial pay, or without pay, on any grounds that are deemed appropriate and justified by the responsible authorities.

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1.4 Special leave may be approved for the following reasons:

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1.4.4 **Study Leave**: Study Leave may be approved with or without pay for up to twelve months subject to the provisions of Personnel Directive A/17, provided that the staff member shows written evidence of having received a scholarship or permission to study at an advanced level, a course of a defined duration. The staff member must also give written assurance that he/she will return to duty on completion of the course. Periods in excess of twelve months may be authorized exceptionally upon certification by the Field Director or Director of Human Resources after consultation with the concerned Head of Department at Headquarters that it is in the Agency’s interests to do so.

19. Personnel Directive A/17 regarding “Attendance at Training Courses, Scholarship Courses, Symposia and Conferences” states:

1. **PURPOSE:**

The purpose of this directive is to establish a general guide to the Agency’s administrative policy governing the payroll status and other entitlements of the Agency’s Area staff members when they are released from normal attendance at duty in order to attend training courses, scholarship courses and professional symposia and conferences.

2. **CLASSIFICATION OF COURSES**

Such courses are grouped as follows for the purpose of this directive:

2.1. **Category “A” Courses**
This group will include all training courses, scholarship courses, professional symposia and official conferences where the staff member’s attendance is initiated and desired by the Agency, as a part of his/her normal duties or as an extension of those duties. In the case of training and scholarship courses, there is an underlying presumption that the staff member’s training is motivated primarily by the Agency’s operational interests, and in the case of symposia and conferences that the staff member is directed to attend either as a representative of the Agency or because his/her attendance is considered to be necessitated by the Agency’s interests.

2.2 **Category “B” Courses:**

The Agency’s interest in these courses is partial. This category will comprise those training courses and scholarships which, although the staff member’s attendance may not have been initiated by the Agency or regarded by it as a programme necessity and therefore required, are nevertheless of such a character as to improve in some measure the professional qualifications of its staff in a function where this will enhance the quality of the professional services being made available to the Agency. The same considerations apply to professional symposia and conferences, where attendance is not required as a matter of programme necessity, but where the benefits derived by the staff member would nevertheless be reflected in some measure in the professional services rendered by the staff member on his/her return to duty.

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3. **THE DESIGNATION OF COURSES AND APPROVING AUTHORITIES:**

3.1 Recommendations for the designation of courses and nomination of candidates into categories “A”, “B” in accordance with the principles set out above shall be made by the Department Head concerned and forwarded to the following approving authority for final approval:

(A) Field Director for Field staff;

(B) Director of Administration and Finance/UNRWA Comptroller in consultation with the concerned Department Head for HQ staff (Gaza) and (Amman).
3.2. However, in order to ensure a uniform implementation of the terms of this directive, particularly in those circumstances where a single course or professional symposium etc. may be attended by staff from different Field offices, the recommendation should be co-ordinated with Director of Administration and Finance/UNRWA Comptroller to consult him in cases of difficulty.

3.3. No proposal for staff training involving Agency expenditure should be submitted unless funds are certified available. In this connection expenditure would include any cost of replacing the staff member concerned while absent from his/her post as well as any costs of the proposed training itself. Appropriate certification of the availability of budget funds should therefore be obtained and should accompany any proposals when submitted to the approving authority.

3.4. The Agency is justified in rejecting an application for special leave in Category “B” courses if attendance is requested for long periods, which may cause inconvenience to the Agency that may result from having to replace the staff member on temporary basis.

5. PAYROLL STATUS AND RELATED ENTITLEMENTS:

5.1 Category “A” Courses:

Staff members shall normally be retained in duty status under the relevant provisions of the Staff Rules and Personnel Directives, subject to the following:

5.1.1. Salary and Allowances:

Salary, salary increments and all allowances other than representation allowance and Acting Appointment Allowance will normally continue to be paid throughout the period of absence.

5.2. Category “B” Courses:

5.2.1. Salary and Allowances:

Staff members will be placed on special leave without pay (under the normal provisions of the Staff Rules) provided that, if a special case exists for
paying part or whole of normal salary or allowances, despite the fact that the course is in Category “B”, consideration may be given provided that no replacement staff is necessary.

Main Issue

20. The principal issue in this case is what was the reason for the Respondent refusing the Applicant’s request for SWLP or SWLPP. Having determined the reason it is for the Tribunal to make a judicial determination as to whether the Respondent acted unlawfully in that there was a failure to comply with the terms of the Applicant’s contract of employment.

21. The Applicant is mistaken in his submission that the Respondent is obliged to accord to him the same benefits as are available to academic members of staff of the University of Jordan under Article 14 of the Legislation of the University of Jordan. The Respondent is correct in its submission that the terms and conditions of the Applicant’s contract of employment are as set out in his letter of appointment and the Agency’s Area Staff Regulations, Rules and administrative issuances.

22. It is clear from paragraph 3.3 of PD A/17 that:

No proposal for staff training involving Agency expenditure should be submitted unless funds are certified available. In this connection expenditure would include any cost of replacing the staff member concerned while absent from his/her post as well as any costs of the proposed training itself. Appropriate certification of the availability of budget funds should therefore be obtained and should accompany any proposals when submitted to the approving authority.

23. Whilst it could be said that attendance as a Fulbright Scholar will undoubtedly enhance the Applicant’s experience and skill sets and arguably be beneficial to the Applicant’s students and the Agency, there is no obligation on the Agency to grant every request. Moreover, even if the Agency were to consider a particular programme of benefit to the underlying aims and objectives of the Agency, there is an obligation to consider whether funds are available for the said purpose. Were the Agency to disregard the requirements of Article 3.3 of PD
A/17 it would have been not only unlawful but arguably an act of gross irresponsibility.

24. There is no reason to suppose, nor has it been suggested, that the reason given that funding was not available was other than correct in this case irrespective of what may have happened in 2007. Moreover, there is not a shred of evidence to suggest that this reason was bogus in the sense that it was a cover for some other unacceptable or unlawful motive.

25. Whilst it is understandable that the Applicant is disappointed in not being given SLWP or SLWPP, the decision reached by the Agency was well within its discretion which was properly and lawfully exercised. There is no merit in the application.

**Judgment**

26. The application is dismissed.

____________Signed__________

Judge Goolam Meeran
Dated this 15th day of April 2013

Entered in the Register on this 15th day of April 2013

____________Signed____________

Laurie McNabb, Registrar, UNRWA DT, Amman