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ADMINISTRATIVE TRIBUNAL

Judgement No. 867

Case No. 938: OBEID

Against: The Commissioner-General  
of the United Nations  
Relief and Works Agency  
for Palestine Refugees  
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen, Vice-President; Mr. Julio Barboza;

Whereas at the request of Suleiman Kalil Obeid, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA or the Agency, the President of the Tribunal, with the agreement of the Respondent, extended the deadline for the filing of an application with the Tribunal until 31 August 1996;

Whereas, on 30 July 1996, the Applicant filed an application requesting the Tribunal, inter alia, to order:

"[The production of certain documents and:

- i. a change in his date of birth from 1924 to 1930]
- ii. [That he] be compensated the equivalent of two years' salary at the exchange rate of [the] US dollar in effect at the time of [his] retirement in 1985 [because of the Agency's refusal to do so];
- iii. [That he] be compensated for the interest rate [he] should have received on the foregoing compensation from 1985 up [to] now;
- iv. [That he] be compensated for the financial loss for being unable to benefit from the foregoing compensations from 1985, or 1990, the normal year of [his] retirement.

..."

Whereas the Respondent filed his answer on 9 October 1996;

Whereas, on 30 December 1996, the Applicant filed with the Tribunal a request for certain documents from the Respondent;

Whereas, on 4 March and 1 April 1997, the Respondent submitted his comments on the request for production of documents;

Whereas the Applicant filed written observations on 10 July 1997;

Whereas, on 8 October 1997, the Respondent submitted comments on the Applicant's written observations;

Whereas, on 11 October 1997, the Applicant submitted an additional document;

Whereas, on 12 November 1997, the Applicant filed additional comments;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 20 February 1959, as a Building Supervisor on a non-continuous, daily paid basis. On 16 September 1960, the Applicant applied for the post of Maintenance Supervisor. On the application for employment he listed his birth date as 1924. With effect from 12 December 1960, the Applicant was appointed as a Maintenance Supervisor 'A' in Aleppo, Syrian Arab Republic (SAR), at the grade 7, step I level. The Personnel Action form relating to this appointment gives the year of his birth as 1924.

On 2 January 1984, the Area Officer for Aleppo and Lattakia wrote to the Acting Deputy Director of UNRWA Affairs, SAR, attaching a request from the Applicant that his birth date be amended from 1924 to 1930 in the Agency's records. On this letter were written the words "Not Approved, 9.1.84". On 3 May 1984, the Applicant wrote to the Director of UNRWA Affairs, SAR, (the Field Director), reiterating his previous request and enclosing a copy of a judgement rendered on 15 November 1983 by the Syrian Civil Status Court that, in accordance with the Applicant's petition to that court, his date of birth was 1934. The judgement was taken on the basis of the "personal confirmation" by two witnesses of the Applicant's contention. In his letter of 3 May 1984, the Applicant noted that, as was

the case with many other Palestinian refugees, he had been unable to bring his birth certificate with him. In lieu of a birth certificate, he attached to the letter a medical affidavit stating that he was approximately 54 years of age.

On 13 June 1984, the Director-General of the SAR General Administration for Palestine Arab Refugees (GAPAR) wrote to the Field Director, attaching a request from the Applicant relating to the correction of his date of birth from 1924 to 1930. The Director-General asked that the request be "treated fairly, provided that this shall not contradict ... your established rules and regulations." On 14 June 1984, the Field Personnel Officer, SAR, advised the Applicant that his request had been denied. In a reply dated 2 July 1984 to the Director General of GAPAR's letter of 13 June 1984, the Officer-in-Charge, SAR, regretted that "the Agency cannot deviate from its regulations that only the first declared age at the time of appointment supported by the original civil registration status will be considered as valid for retirement purposes."

On 20 June 1984, the Administration notified the Applicant that his services would be terminated on 31 December 1984, since "Agency records indicate that your declared date of birth is 1924 and, therefore, you will attain your 60th birthday by the end of December 1984." After a short extension, the Applicant was separated "on grounds of age" on 28 February 1985.

Thereafter in an undated letter, the Applicant wrote to the Director General of UNRWA, seeking to have the date of his birth changed to 1934 in the Agency's records and to be reinstated in his former post. In a reply dated 27 November 1991, the Director of UNRWA Affairs, SAR, denied the Applicant's request for a change of his birth date, noting that "what was surprising about the matter was not that you waited about 24 years to submit [the claim] and 6 years (after your retirement) to submit this letter, but that you stated therein two different dates for your birth (1930 and 1934 respectively) claiming them both to be true and corroborating your claims with documentary evidence."

In a letter dated 1 September 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the Agency's refusal to change the date of his birth in its records from 1924 to 1930. The JAB adopted

its report on 14 July 1995. Its findings, evaluation and judgement read, in part, as follows:

"... the Board is of the opinion that the evidence submitted by the Appellant on 3 May 1984 has been sufficient and acceptable to support his claim to have his date of birth changed from 1924 to 1930, as required by the then version of the applicable part of Personnel Directive A/9.

#### IV. RECOMMENDATION

21. ... the Board unanimously makes its recommendation that the Appellant be granted compensation equivalent to 24 months of salary calculated on the basis of his last base salary at the time of his retirement in 1985."

On 14 August 1995, the Commissioner-General of UNRWA transmitted a copy of the JAB report to the Applicant and informed him as follows:

"I refer to the enclosed copy of the report of the Joint Appeals Board on your case, submitted to me under cover of a memorandum from the Chairman, dated 14 July 1995. You will note that the Joint Appeals Board concluded that your birth date should have been amended, in 1984, on Agency records to show a birth date of 1930, rather than 1924, and that you should not have been separated on the basis of age in 1985. The Board has recommended that you be granted compensation equivalent to 24 months of salary, calculated on the basis of your last base salary at the time of your retirement in 1985.

I have carefully reviewed the Board's report. I note that you did not raise the issue of your birth date for many years after your appointment and also did not appeal for many years after your initial request had been denied. Moreover, you did not meet the requirement of the Agency's policy, in 1984, regarding the amendment of a birth date declaration in that you have failed to show that 'special, extenuating circumstances' existed at the relevant time, as required by Area Staff Personnel Directive A/9.

I have, therefore, decided not to accept the Board's conclusions and recommendations; your appeal is, therefore, dismissed.

..."

On 30 July 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant has produced evidence, supported by documentation,

to show that the date of birth initially recorded in the Agency's records was incorrect. The Agency's failure to change the Applicant's birth date in its records, and its termination of his services "on grounds of age", were motivated by prejudice against the Applicant.

Whereas the Respondent's principal contention is:

The Agency's policy in relation to dates of birth, in accordance with personnel directive A/9, was correctly applied in the Applicant's case and the Applicant has produced no evidence to show that the Agency's policy was motivated by bias or prejudice against the Applicant.

The Tribunal, having deliberated from 31 October to 26 November 1997, now pronounces the following judgement:

I. The Applicant joined the Agency on 20 February 1959, as a daily-paid Building Supervisor. On 16 September 1959, he gave 1924 as his year of birth. He now claims that he was born in 1930 and not in 1924. In any event, he was 29 years of age when he joined UNRWA and yet he gave his year of birth as at least 6 years earlier (1924) than what he now asserts (1930). Indeed, there is evidence to show that in May 1984 he was stating that he was born as late as 1934. However, subsequent developments showed that when the JAB considered his case at the end of October 1994, the Applicant was insisting that he was born in 1930.

II. Accordingly, the Applicant claimed that he was prematurely retired on 28 February 1985, and should have continued to work for another six years, i.e. until 1990. The JAB unanimously recommended that the Applicant's year of birth be changed to 1930 and that he be "granted compensation equivalent to 24 months of salary". The JAB did not elaborate or explain the basis of its recommendation which, in any event, was rejected by the Respondent. It is against this decision that the Applicant now appeals.

III. The Respondent's arguments in rejecting the JAB's recommendation were mainly based on his conclusion that the Applicant had "failed to show that special extenuating circumstances existed at the relevant time as

required by area staff personnel directive A/9". The Respondent also commented on the Applicant's delay in raising the question. Apparently, the Applicant did not ask for any change until about a year before his retirement - a delay of over 20 years. This first request was denied on 9 January 1984, and yet the appeal to the JAB was not filed for over 10 years. In the view of the Tribunal these long delays have not been satisfactorily explained by the Applicant: his pleas that he was not fully aware of the Staff Regulations and Rules, and of the various administrative instructions issued under them, cannot be sustained. On 17 September 1960, the Applicant signed in his Letter of Appointment a declaration which read:

"I hereby accept the appointment described in this letter subject to the terms and conditions therein specified and to those laid down in the Staff Regulations and Rules applicable to the area staff members, and to any changes or amendments which may from time to time be made thereto."

Apart from this, the Tribunal notes that, in 1991, when UNRWA extended the scope of the jurisdiction of its JAB to consider the various complaints of area staff members in the same manner as the U.N. staff members, the Applicant was aware of these changes and even travelled to Damascus to consult a lawyer who was apparently familiar with this issue. This lawyer was then abroad and could not be contacted, but all the Applicant's subsequent efforts indicate that he was not ignorant of the various remedies available to him. Yet, he did little to accelerate matters in UNRWA even though his financial condition was far from satisfactory; he had a large family to support and complained about his "total inability to manage [his] own affairs."

IV. Nonetheless, on 3 May 1984, the Applicant filed a medical certificate stating that he was approximately 54 years old (i.e., born in 1930) and on the same date produced a copy of a Civil Registration Record issued by the Syrian Arab Republic Ministry of Social Affairs and Labour, General Administration for Arab Palestine Refugees. This certificate contained the following sentence: "Amendments: Date of Birth was amended from 1924 to 1930 in conformity with a verdict from the Court of Personal Statute in Aleppo, under reference No. 690 sentence No. 687 dated

15.11.1983."

V. In the English translation of the Arabic version of this sentence, the presiding judge said, inter alia: "Correcting the date of plaintiff's birth to be 1934, instead of 1924, and his entry (registration) becomes as follows: Sulaiman OBAID, son of Khalil and Zarifa, born at Mazka/Hattin in 1934, muslim, male, married and Palestinian, as per the I.D. Card of Family No. 22516." On the basis of these two documents (the Court's Judgement of 15 November 1983 and his medical certificate filed on 3 May 1984), not only was the Applicant's record in the Syrian Ministry amended, but also his UNRWA registration card, so that the Applicant's year of birth became 1930 in these records.

VI. The question before the Tribunal is whether these changes could be considered as "special extenuating circumstances" justifying a change in the Applicant's year of birth. The Respondent implies that he works on two sets of records for different purposes. He says that his established policy is that "once a birth date has been provided to the Agency ..., it becomes part of the Agency's internal and official records." As such it governs the application of all official determinations with respect to age, including the date of retirement, and, as an internal record of the Agency, it is beyond the jurisdiction of external parties. By "external parties" the Respondent presumably means that, in this instance, Syrian Courts' and authorities' decisions and pronouncements are not binding on the Respondent. He further argues that since the Applicant retired in 1985, and all that he did in relation to the Syrian authorities after that date he did privately, the Respondent was not affected.

The second set of records (also known as Respondent's Registration Records for Palestine Refugees) are kept, the Respondent claims, for the purpose of "recording entitlements to service" to the refugees. The Tribunal interprets this to mean that these refugee records can be changed readily to decide the entitlement of different refugees and do not affect the personnel records which are "compiled following the formal certification by a staff member that the data supplied by [the staff member] at the time of recruitment" are assumed to be correct.

VII. Because of this system of maintaining two sets of records - however practical the system may be - the Applicant suggested on 12 November 1997 to "adjourn the case until the Respondent produce[d] the said 'different rules' governing Personnel Records." The Tribunal takes the view that sufficient material is available to it to appreciate the difference between the two sets of records and that an adjournment is not necessary.

VIII. Finally, the Respondent maintains because of the disturbed situation in West Asia and understandably the chaotic, and often confused situation relating to refugee problems, it is often not possible to follow the strictest minutia of administration and he is thus compelled to adopt pragmatic solutions. The Respondent maintains that if the declarations of year or date of birth made at recruitment were to be changed, it would lead to endless complications which, with the Respondent's limited resources, including unavailability of experts and equipment, he would not be able to overcome. The disturbed conditions in which the refugees came over are also referred to by the Applicant. The Respondent states that, presumably because of these reasons, the U.N. also follows the system of not permitting any change in the initial declaration of birth, unless most convincing reasons are cited.

IX. Taking all the arguments and pleadings into account, the Tribunal finds that in the present case, the Applicant did not have a right to have his year of birth changed and that the Respondent correctly concluded that no special extenuating circumstances exist to justify such a change. In a similar case, the Tribunal noted that:

"The Applicant did not make any reservation concerning his birth date when he was first appointed in 1977 and waited until 1991 to do so. He was negligent ... [and] it follows that the Administration rightly declared his appeal not receivable." (Cf. Judgement No. 837, Sakbani (1997)).

The Applicant has not cited any convincing evidence or precedents to establish that the Respondent took any different decisions in similar cases. The Respondent is entitled to treat the Applicant's plea of having to support a large number of dependents as not constituting "special



extenuating circumstances."

X. In the light of the above, the Tribunal rejects the application in its entirety.

(Signatures)

Hubert THIERRY  
President

Samar SEN  
Vice-President

Julio BARBOZA  
Member

New York, 26 November 1997

R. Maria VICIEN-MILBURN  
Executive Secretary