



Administrative Tribunal

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30 September 2009

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1448

Case No. 1523

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. Spyridon Flogaitis, President; Sir Bob Hepple; Mr. Agustín Gordillo;

Whereas on 24 July 1998, a former staff member of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, filed an application that did not fulfill the formal requirements of article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant, the President of the Tribunal granted an extension of the time limit for filing an application until 30 June 1999, and numerous times thereafter until 31 January 2007;

Whereas, on 28 February 2007, the Applicant, after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

... *[To find]:*

1. [t]he decision LEG 261/A [does not have] any base in the Area Staff Regulations and Rules ... nor in the [statute] and rules of [the United Nations Administrative Tribunal] ....

2. ...[t]he passage of time [as to the issue of receivability] is the responsibility of the [United Nations Relief and Works Agency for Palestine Refugees in the Near East, (UNRWA).]

3. [there are exceptional circumstances which warrant the waiver of the time-limits.]
  4. [the Applicant] was [re-]appointed on [8 August 1957 and he] dare[d] not offer [his] petition because [he] was under threat as it is clear in Articles 6 [and] 7. [He was threatened with termination of his contract if he filed a petition against any officer.]
  5. ... [UNRWA bears the responsibility as to the delay]. [UNRWA] has to pay the real value of the compensation.]
  6. [the facts of the case warrant the rescission of the contested decision LEG 261/A.]
  7. [the Applicant should be awarded compensation in the amount of USD 49,938.00.]
- ....”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time-limit for filing a Respondent’s answer until 3 September 2007;

Whereas the Respondent filed his Answer on 3 September 2007;

Whereas the Applicant filed Written Observations on 26 March 2008;

Whereas the Respondent filed an additional communication on 31 October 2008;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

*“Summary of facts*

... [The Applicant was employed by UNRWA on a temporary indefinite appointment as Teacher grade 1, in the Hussein Boys School, Amman, Jordan. On 27 November 1956, his contract was terminated for abuse of authority and he was accused by the local authorities of beating one of his students. However, charges were never filed against the Applicant. On 8 June 1957, the Applicant was reappointed as teacher. On 28 February 1991, the Applicant retired from service due to age and soon thereafter on five occasions requested payment of his salaries for the period 27 November 1956 to 8 June 1957. On 23 July 2002, UNRWA informed the Applicant that his claim was reviewed thoroughly and that he had been paid all the retirement benefits due. He was further notified that his service computation date was the date of his re-appointment, 8 June 1957.]

... [On 20 September 1993, the Applicant communicated to UNRWA that the decision to terminate his services on 27 November 1956 was improperly made and restated his request for payment of salary for the subject time period. On 19 November 1993, UNRWA informed the

Applicant] that his claim [was time-barred] ... and even if it [had been filed timely] ..., there [was] no evidence that [UNRWA had] acted in [an] unreasonable or capricious manner in terminating his services in 1956.

... On 1 February 1995, the [Applicant] wrote to the Commissioner-General requesting that his case be reviewed.

... On 15 February 1995, [the] Chief, Personnel Services Division, responded confirming the Administration's decision.

... On 19 May 1997, the [Applicant] wrote to the Director of UNRWA Operations, West Bank, requesting ... review [of] the Administration's decision.

... On 26 June 1997, [the] Field Administrative Officer, West Bank, responded confirming that [the Applicant's] case ha[d] been reviewed many times and given proper consideration by all concerned and that [UNRWA] consider[ed] [the Applicant's] case as closed."

On 22 June 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report sometime between April and May 1998. Its considerations and recommendation read, in part, as follows:

***“Recommendation***

21. In view of the forgoing and without prejudice to any further oral or written submission to any party, the Appellant may deem pertinent, the Board unanimously makes its recommendation that the case be dismissed.”

On 1 June 1998, the Commissioner-General for UNRWA transmitted a copy of the report to the Applicant and informed him that:

“I have carefully considered the Board's report and noted the Board's determination and recommendation. I agree with the Board. Accordingly, your appeal is dismissed.”

On 28 February 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The application is receivable.
2. The Respondent's actions and/or omissions were the cause of much of the delay in this case.
3. The JAB erred in finding the case not receivable

4. The incident related to the beating of his pupil and the disciplinary action that followed were directly related to the present case as he was prejudiced and threatened not to file an appeal with the JAB or else his contract would be terminated.

5. This case merits appropriate compensation.

Whereas the Respondent's principal contentions are:

1. The Application is not receivable as it was filed eight years after the filing deadline as per article 7 of the Tribunal's Statute.

2. In the alternative, the JAB did not err when it found that the Applicant's appeal was time-barred and accordingly, the Commissioner General correctly dismissed the appeal.

3. In a further alternative, the Respondent's decision of 1957 to terminate the Applicant for beating a pupil was properly made, without any evidence that the disciplinary action was due to any wrongdoing, including procedural error, prejudice or other extraneous factors.

The Tribunal, having deliberated from 29 June to 31 July 2009, now pronounces the following Judgement:

I. The preliminary issue is whether the Application is time-barred. Article 7(4) of the Statute of the Tribunal requires that an application (or an extension of time for filing an application) must be filed within ninety days reckoned from the date of the communication of the JAB's opinion containing recommendations unfavourable to the Applicant. In this case, the Respondent notified the Applicant of the JAB's recommendation by letter dated 1 June 1998, which was received by the Applicant on 30 June 1998. But for almost nine years, with long breaks, the application went to and fro between the Applicant and the Secretariat of the Tribunal because it did not meet the technical requirements of the Rules of the Tribunal. It was finally accepted, despite some technical defects, on 28 February 2007.

II. In order for an application to be receivable it must clearly meet all the requirements laid down in article 7 of the Rules of the Tribunal. The applications submitted did not meet all those requirements, and, strictly speaking, even if the application of 28 February 2007 was deemed to be in compliance with the Rules, it is now well out of time. The Tribunal has consistently stated that strict adherence to the Statute's time limits is essential for ensuring the proper administration of justice. (See Judgement No. 1335 (2007); Judgement No. 1257 (2006); Judgement No. 1259, *Mahktoub* (2003); and Judgement No. 1046, *Diaz de Wessely* (2002)). At the same time, the Tribunal has allowed an extension of time limits in "exceptional circumstances". (See Judgement No. 579, *Tarjouman* (1992)). The Applicant has the burden of demonstrating that he was prevented from lodging his application in time due to "serious reasons" or "circumstances beyond his control". In the present case, the Applicant has provided no specific explanation, but it is clear that his knowledge of English is very limited, that he had little if any assistance,

and that there were communication problems. In these circumstances, and in view of the fact that the Applicant filed his first attempt at an application within the time limits, the Tribunal is willing to regard these as “exceptional circumstances” and to receive the Application.

III. However, the Application must fail because in the Tribunal’s judgment, the JAB correctly decided that the appeal was time-barred under Area staff rule 111.3, “Procedures of the Joint Appeals Board”, which states:

“3. A staff member who wishes to appeal under the terms of staff regulation 11.1, after having sent a letter to the Agency’s administration in accordance with the foregoing provisions of this rule, shall submit a written appeal, specifying his/her allegations, to the Secretary of the Joint Appeals Boards within the following time limits . . .

(B) In the case of staff members of Field Offices, within three weeks from the date of the receipt of a reply from the UNRWA Field Office Director, or, if no reply has been received from the latter within two weeks of the date of the staff member’s letter, then within the next three following weeks.”

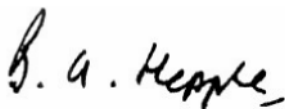
IV. The Tribunal has consistently held that staff members must be diligent in asserting their rights. The JAB has discretion to waive the time limits in Area staff rule 111.3, paragraph 4, in “exceptional circumstances”. In the present case, the only allegation made by the Applicant to explain the forty-year delay in raising the matter of compensation for his dismissal in 1956, is that, since his reappointment on 8 June 1957, he was “under threat of termination if I offer any petition [as regards the contested decision].” The Applicant does not provide any evidence in support of this allegation. In any event, the alleged threat does not explain his subsequent delays in seeking review and appealing to the JAB, after he retired from service in 1991.

V. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

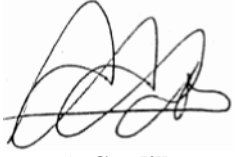
*(Signatures)*



Spyridon **Flogaitis**  
President



Bob **Hepple**  
Member



Agustín **Gordillo**  
Member

Geneva, 31 July 2009



Tamara **Shockley**  
Executive Secretary