AL RIFAI

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Ayesha Al Rifai Abu Hweij (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 upgrade her post of Dean, Educational Science Faculty and Principal, Ramallah Women’s Training Centre, from Grade 17 to Grade 18.

Facts

2. Effective 1 October 2006, the Applicant was employed by the Agency as Deputy Dean, Education Science Faculty, Grade 15, at the Ramallah Women’s Training Centre (“RWTC”).

3. By letter dated 26 December 2007, the Applicant was informed of her selection for the post of “Dean, Principal [RWTC] and Education Science Faculty (‘ESF’)” at Grade 16.

4. Effective 1 June 2010, the Applicant’s post grade was upgraded to Grade 17.

5. By memorandum dated 27 July 2011, the Chief, Compensation and Management Services Division (“CCMSD”) transmitted to the Field, Human Resources Officers Agency-wide, copies of the Area post descriptions for the Training Centres in all Fields. The post of “Principal/Dean, Training Centre” was at Grade 17. The Applicant acknowledged receipt of a copy of the post description on 6 September 2011.

6. By memorandum to the Director of Human Resources (“DHR”) dated 24 November 2011, the CCMSD recommended upgrading the post of Dean, ESF and Principal, Training Centre from Grade 17 to Grade 18 in line with a proposed reclassification of the equivalent post of Dean, Faculty of Educational Sciences and Arts (“DFESA”) in Jordan to Grade 18.

7. On 30 November 2011, the DHR approved the post description for the post of Dean, ESF and Principal, Training Centre at Grade 18, for the Ramallah Men’s
Training Centre (“RMTC”)/ESF and the RWTC/ESF. The DHR also formally approved the post description of DFESA in Jordan at Grade 18.

8. By email dated 1 May 2014, the Applicant and the Principal, Kalandia Training Centre made a joint request for the upgrade of their respective posts from Grade 17 to Grade 18.

9. By email dated 26 May 2014, the Head, Field Human Resources Office (“HFHRO”) rejected the joint request.

10. On 21 July 2014, the Applicant requested review of the decision not to upgrade her post from Grade 17 to Grade 18.

11. By letter dated 19 August 2014, the Director of UNRWA Operations, West Bank (“DUO/WB”) replied to the Applicant’s request for decision review. The decision was upheld.

12. On 16 November 2014, the Applicant filed an application with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 19 November 2014.

13. On 19 December 2014, the Respondent filed his reply.

14. On 24 February 2015, the Applicant submitted a motion to file observations on the Respondent’s reply. The motion was transmitted to the Respondent on the same day.

15. On 6 March 2015, the Respondent filed a response indicating that he did not object to the motion. The response was transmitted to the Applicant on 8 March 2015.

16. By Order No. 024 (UNRWA/DT/2015) dated 8 March 2015, the Tribunal granted the Applicant’s motion to submit observations.

17. On 29 March 2015, the Applicant filed her observations on the Respondent’s reply.
Applicant’s contentions

18. The Applicant contends that:

i) The decision is in violation of her letter of appointment where it is clearly stated that she holds the dual post of Dean and Principal. She was never informed or agreed to any change in her post title;

ii) The Administration decided to upgrade the posts in 2009 and the ESF was only transferred from the RWTC to the RMTC in 2011. Therefore, it is not proper to justify the denial of her post upgrade with the transfer of the ESF because this took place after the decision to upgrade was taken;

iii) She did not request the reclassification of her post. Her post had already been reclassified and established as such;

iv) She is in charge of the largest of the three Technical and Vocational Education and Training (“TVET”) Centres in the West Bank. Furthermore, the courses that she supervises and teaches have increased in number, diversity and complexity;

v) When the DUO/WB reviewed the contested decision, he incorrectly relied on the fact that she no longer supervises the ESF at the RWTC. However, this is an irrelevant consideration;

vi) The contested decision does not conform to other higher education systems and practices. The work at the TVET Centre is more complex and demanding than traditional education such as the ESF; and

vii) The contested decision breaches her terms of appointment and her right to non-discrimination.

19. The Applicant requests:

i) The upgrade of her post to Grade 18 with retroactive effect as of 2009; and
ii) An investigation to clarify the reasons why the Chief, Field Education Programme in West Bank (“CFEP/WB”) withheld the implementation of the decision to upgrade her post for several years.

**Respondent’s contentions**

20. The Respondent contends that:

i) The decision not to upgrade the Applicant’s post from Grade 17 to Grade 18 was properly effected. In view of the reforms at the West Bank Field Office (“WBFO”), all ESF programmes were merged into one location, i.e. the RMTC. As a result, the RWTC no longer had an ESF programme;

ii) Pursuant to the post description of Dean, ESF and Principal, Training Centre, the Grade 18 position includes supervision of Professor and Associate Professor positions, a situation that does not apply to the RWTC;

iii) The Applicant has not provided any evidence that the contested decision was arbitrary or capricious, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law;

iv) There is no basis for the Applicant’s allegation that she was discriminated against. Following reforms at the WBFO, the RWTC no longer has an ESF programme whereas the RMTC runs the entire ESF programme. The upgrade of the relevant post in the RMTC was only effected after the completion of the merger decision;

v) There was no breach of the Applicant’s letter of appointment. The Applicant ceased to perform the functions of Dean, ESF when the ESF programmes were merged into one and placed under the RMTC;

vi) Contrary to the Applicant’s assertion, no decision was made in 2009 in relation to the upgrade of the post. The post of Dean, ESF and
Principal, Training Centre was only recommended for upgrade on 24 November 2011, and the respective post description was approved on 30 November 2011. However, the upgrade was not immediately effected because of the ongoing reforms at WBFO;

vii) Additional responsibilities of the Dean, ESF were a material consideration for the upgrade, a situation which does not exist at the RWTC after the merger following the reforms at WBFO; and

viii) The relief sought by the Applicant has no basis.

21. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

22. The Applicant contests the decision not to upgrade her post of Dean, ESF and Principal, RWTC Centre from Grade 17 to Grade 18.

23. The Applicant argues that the decision to upgrade the Dean posts was taken in 2009. In support of her claim, she alleges that, in December 2011, the CFEP/WB clearly acknowledged that the Applicant’s post was at Grade 18. However, the evidence in the file shows that the reclassification of the post of Dean, ESF and Principal, Training Centre to Grade 18, was not implemented because of the ongoing reforms at the WBFO which included the merger of the ESF programmes and their placement under the RMTC.

24. The Applicant claims that her post was not upgraded although another similar post of Dean was upgraded. She argues that there is no reason for the difference in treatment because the post description of the post that she holds is exactly the same as that of the post that was upgraded.

25. The Tribunal notes that the DUO/WB explained the difference in treatment in his 19 August 2014 reply to the Applicant’s request for decision review. The DUO/WB clarified that, while the Applicant’s functional title was “Dean, ESF/Principal RWTC”, her post functions and level of responsibilities were not
the same as the Grade 18 post because she no longer supervised an ESF programme and that, as a consequence, the reference to “Dean, ESF” in her functional title was no longer current.

26. It is clear for the Tribunal that the Applicant cannot claim that the post she encumbers has the same responsibilities as that of Dean, ESF and Principal, RMTC. The evidence shows that following reforms at the WBFO, the duties and responsibilities at the RMTC and the RWTC are no longer similar because the RMTC covers all ESF programmes which had been merged into one location.

27. The fact that the Applicant’s post description was not updated following the reform of the ESF programmes in that the description still includes Dean, ESF and Principal, RWTC is not a relevant consideration; rather, the relevant considerations are the actual responsibilities of the Applicant. The Tribunal notes that the Applicant’s responsibilities as of the 2013-2014 academic year do not include the supervision of Professor and Associate Professor positions, whereas the post of Dean, ESF and Principal, RMTC, which was upgraded to Grade 18, does include the supervision of such staff. Therefore, the Applicant cannot claim that she was a victim of discrimination.

28. The Applicant alleges that the contested decision does not conform to other higher education systems and practices. The Tribunal recalls that the Agency has its own Staff Regulations, Rules and other issuances and that the Commissioner-General has broad discretionary authority in their application, including the organization of work and the classification of posts. The United Nations Appeals Tribunal has regularly confirmed this authority and has stated that the exercise of discretionary authority will not be disturbed unless the decision was arbitrary or was motivated by prejudice or extraneous factors, or flawed by procedural irregularity of error of law. In the absence of such irregularities, this Tribunal will not substitute its own judgment for that of the Agency.
Conclusion

29. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed.

(Signed)
Judge Jean-François Cousin
Dated this 10th day of August 2015

Entered in the Register on this 10th day of August 2015

(Signed)
Laurie McNabb, Registrar, UNRWA DT, Amman