Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

MASRI

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 Fuad Salim Masri (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”), to abolish the post he occupied of Assistant Translator/Interpreter, and to transfer him to the Education Department.

Facts

2. Effective 19 February 2012, the Applicant joined the Agency as an Assistant Translator/Interpreter, Grade 15, at the UNRWA Dispute Tribunal (the “Tribunal”). The Applicant was appointed on a fixed-term appointment expiring on 31 December 2012. The appointment was subject to a probationary period of 6 months.

3. By letter dated 14 October 2012, the Applicant was informed that his appointment had been confirmed. On 31 December 2012, the Applicant’s appointment was extended for another period of one year ending on 31 December 2013.

4. By email sent to the Applicant on 3 February 2013, the full-time Judge of the Tribunal reiterated what she had told him before verbally: that the Applicant should pay more attention to his work and improve on the quality of his translations.

5. On 14 February 2013, the Chief, Compensation and Management Services Division ("C/CMSD") sent an Inter-Office Memorandum ("IOM") to the Director of the Department of Human Resources concerning the updating and reclassifying of the post of Assistant Translator/Interpreter at the Tribunal. In this IOM, reference is made to an email dated 7 February 2013 from the full-time Judge to the C/CMSD.
6. On 21 February 2013, the post of Translator at the Tribunal, Grade 16, was advertised. One hundred and seventy-four candidates, including the Applicant, applied for the post.

7. On 11 March 2013, a “Performance Improvement Discussion (“PID”) meeting” took place between the Applicant and his first and second supervisor, respectively, the Registrar and the full-time Judge.

8. On 2 April 2013, the Applicant, together with other shortlisted candidates, was subjected to a test for the post of Translator at the Tribunal, Grade 16. The test was anonymous and the candidates were given numbers. The Applicant did not pass the test.

9. On 8 May 2013, a new PID meeting took place with the Applicant. This meeting constituted the end of the informal Opportunity to improve (“OTI”) process and a formal OTI process was established to start on 28 May 2013, for a period of two months.

10. On 16 June 2013, the Registrar, in a formal OTI report, informed the Applicant that the OTI process could be shortened if he failed to improve.

11. By email dated 20 June 2013, the Applicant submitted to the Director of the Department of Human Resources a complaint for abuse of power and harassment, and a request for decision review of the decision to place him under an OTI process, inclusive of the statement that the OTI process could be shortened if he failed to improve.

12. The OTI reports of 30 June 2013 and 14 July 2013 indicated that the Applicant’s performance had been improving.

13. On 18 July 2013, the Deputy Commissioner-General responded to the Applicant’s request for decision review stating that the decision to initiate the OTI process was made in full accordance with the Agency’s Staff Regulations and Rules and other administrative issuances.
14. The final OTI report dated 28 July 2013, stated that the Applicant’s performance showed considerable improvement in the last 30 days.

15. By letter dated 28 November 2013, the Human Resources Officer informed the Applicant of the decision that, effective 1 December 2013, the post of Assistant Translator/Interpreter at Grade 15 would be abolished. Furthermore, he was offered a transfer to the post of Governance Officer Education Department, Grade 14, with salary protection at Grade 15. The Applicant accepted the transfer offer.

16. Effective 5 January 2014, the selected candidate was appointed at the Tribunal as Translator, Grade 16.

17. By letter dated 8 January 2014, the Applicant was informed about the extension of his fixed-term appointment for a period of three years.

18. On 26 February 2014, the Applicant requested review of the decision to abolish his post and to transfer him.

19. On 23 April 2014, the Applicant filed his application with the Tribunal. The application was transmitted to the Respondent on the same day. On 23 May 2014, the Respondent submitted his reply.

20. By Order No. 009 (UNRWA/DT/2015), dated 4 February 2015, both parties were ordered to respond to the issue of receivability of the application on or before close of business 15 February 2015.

21. On 15 February 2015, the Applicant submitted a motion for a two-week extension of time to respond to the Order.

22. By Order No. 018 (UNRWA/DT/2015), dated 15 February 2015, the Tribunal granted the motion.

Applicant’s contentions

24. The Applicant contends that:

   i) The decision was based on a personal bias;

   ii) The involvement of the Judge in staffing matters is damaging as the Judge cannot stay impartial and neutral; and

   iii) There was no reason to abolish his post.

25. The Applicant requests:

   i) To cancel the transfer decision and to be reinstated at the Tribunal; and

   ii) To be granted compensation for the moral and reputational damages.

Respondent’s contentions

26. The Respondent contends that:

   i) The decision to abolish the Applicant’s post was properly effected. It is a discretionary decision motivated by genuine operational needs. The decision to abolish the post of Assistant Translator/Interpreter at Grade 15 at the Tribunal was due to the reclassification of the post as Translator at Grade 16;

   ii) The Tribunal needed a higher standard of translation from English into Arabic and vice-versa, of applications, reports and other documents for internal and external use. Moreover, a higher level was required for interpretation at internal meetings, hearings and other official purposes. The Interoffice Memorandum dated 14 February 2013 from the C/CMSD to the DHR is proof of this;

   iii) The new post of Translator at Grade 16 came with new responsibilities in terms of translation as well as interpretation;
iv) The Applicant applied for the new post but was not selected. The Applicant’s fixed-term appointment as Assistant Translator/Interpreter at Grade 15 was due to expire on 31 December 2013. The selected candidate for the post of Translator at Grade 16 was appointed on 5 January 2014. The Applicant accepted to be transferred to another post effective 1 December 2013. Therefore the reclassification of the post has no negative impact on the Applicant’s terms of appointment;

v) The decision to reclassify the post was not linked to the OTI process and the Applicant improved his performance during the second part of the OTI period. The decision to start an OTI process is not the contested decision;

vi) The Applicant fails to provide relevant evidence in support of his allegations of personal bias from one Judge of the Tribunal. This Judge was the second reporting supervisor of the Applicant and as such had the capacity to be involved in staffing matters. The allegation that the Judge wanted to remove him from the Tribunal regardless if he improved or not is only hearsay; and

vii) The decision to transfer the Applicant to a post in the Education Department was properly effected as he was appointed with the same salary and grade protection at Grade 15, and the Applicant accepted this offer.

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

Considerations

Preliminary issue

28. The Judge assigned to this case has to explain why he cannot recuse himself from the present case. The Applicant was a staff member of the Tribunal. Even if the assigned Judge had not entered duty when the contested decision was taken and has never met the Applicant, he does know the Judge who was at the source
of the decision. Therefore in other circumstances, a self-recusal would be wise. However, it would mean that the Applicant’s case could not be adjudicated by this Tribunal or any other court, which would constitute a denial of justice. Therefore, the Judge will adjudicate this application.

29. The Applicant contests the decision to abolish the post he occupied of Assistant Translator/Interpreter at Grade 15 at the Tribunal and to transfer him to the Education Department.

Decision to abolish the Applicant’s post at the Tribunal

30. The Applicant claims that the decision to abolish his post was based on a personal bias from the full-time Judge, who wanted to terminate his contract. The Applicant alleges that, after an argument with the Judge, he was placed under an OTI process, but never received proper instructions to improve his performance. From the evidence in the case file it is clear that, from the time the Applicant joined the Tribunal on 19 February 2012 to at least 31 December 2012, when his appointment was extended for another year, the Applicant’s performance was evaluated to be a satisfactory performance. However, by email on 13 February 2013, the Judge requested the Applicant to pay more attention to his work and to improve the quality of his translations. It cannot be contested that the full-time Judge, whose mother tongue is Arabic, is well-equipped to evaluate the quality of a translation from Arabic to English or vice versa.

31. When the Applicant’s performance started to deteriorate more, the Tribunal considered that the proper course of action was to place him under the OTI process.

32. The OTI reports dated 30 June 2013 and 14 July 2013 provide that the Applicant’s performance had been improving. The final OTI report, dated 28 July 2013, stated that the Applicant’s performance showed considerable improvement during the last 30 days. Therefore, the Applicant’s claim that the only purpose of applying the OTI process to him was to ultimately terminate his appointment for non-satisfactory performance is without merit.
33. From the evidence in the case file it is clear that, in the beginning of 2013, the full-time Judge considered that the post of Assistant Translator/Interpreter, Grade 15, was not sufficient for the needs of the Tribunal. For that reason, the Judge requested from the Department of Human Resources a reclassification of the post and a new post description. On 14 February 2013, the C/CMSD sent an email to the Director of Human Resources concerning the updating and reclassifying of the post of Assistant Translator/Interpreter at Grade 15. On 21 February 2013, the post of Translator, Grade 16, at the Tribunal was advertised.

34. The Applicant claims that the decision to advertise a new post at Grade 16 was taken with the sole aim to terminate his appointment. However, the Applicant’s appointment expired on 31 December 2013, and there existed no entitlement of renewal. Moreover, when the new post was advertised on 21 February 2013, the Applicant applied to the post and was subsequently shortlisted for the test. However, the Applicant did not pass this test.

35. Contrary to what is alleged by the Applicant, there are significant differences between the post he occupied and the new post at Grade 16. The post he occupied was the post of Assistant Translator/Interpreter in which he was responsible to the Translator/Interpreter, Grade 17. Moreover, as a Grade 15, the Applicant was not formally in charge of translation work, but assisted in translating documents and reports. In comparison, the Translator/Interpreter at Grade 16, has full responsibility for translating applications, judgments and other documents, and is directly responsible to the Registrar.

36. There is no doubt that the full-time Judge decided to advertise an upgraded post with the purpose to recruit a translator with more seniority, responsibilities and competencies than the Applicant. The recruitment of a translator at Grade 16 automatically meant that the previous post at Grade 15 had to be abolished.

37. The Tribunal holds that there was no bias in the decision to abolish the Applicant’s post as it was a decision taken only in the interest of the Tribunal.
The transfer of the Applicant to the Education Department.

38. The Applicant had applied for the new Translator post at Grade 16, but was not selected because he did not pass the test. Subsequently, the Applicant’s post at Grade 15 was abolished. The Agency, in line with Area Staff Personnel Directive A/9, had considered the interest of its staff member to the extent possible and within the resources available, and was able to identify a suitable alternative post for the Applicant.

39. When the Applicant contests the decision to transfer him, he does not present any argument to support this claim. From the file it is clear that the Department of Human Resources had meetings with him about his transfer with salary and grade protection. Moreover, the Applicant accepted the offered transfer. Therefore, the transfer decision cannot be considered to be unlawful.

Conclusion

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

The application is dismissed.

____(Signed)____
Judge Jean-François Cousin
Dated this 21st day of May 2015

Entered in the Register on this 21st day of May 2015

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