Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

MASRIEH

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 Iman Mohammad Masrieh (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”), denying her request for a transfer from the post of Area Education Officer, Central Lebanon Area, to the post of Area Education Officer, Saida Area.

Facts

2. On 5 September 1994, the Applicant entered the service of the Agency as a Secondary School Teacher of English at Grade 9, Step 1, in Lebanon. On 1 September 2003, following several promotions, the Applicant was appointed School Supervisor English at Grade 12. On 1 August 2011, the Applicant was promoted to Area Education Officer (“AEO”) at Grade 15, in the Central Lebanon Area.

3. On 12 August 2013, the Applicant requested her transfer to the post of AEO in Saida Area.

4. By letter dated 17 September 2013, the Head, Field Human Resources Office (“HFHRO”) responded to the Applicant that the Education and Human Resources Departments had reviewed her request and taken into consideration the schools’ needs in the Area. As the Saida Area has the largest number of schools and is considered a tough and challenging Area, her request had not been given a positive recommendation.

5. On 26 March 2014, the Applicant again requested her transfer as AEO to Saida Area. On the same date, the AEO for the Tyre Area submitted a request for transfer to the post of AEO for Saida Area.

6. On 29 April 2014, the Human Resources Services Officer, Lebanon Field Office (“HRSO/LFO”) emailed the Human Resources Officer, Area Personnel Section (“HRO/APS”) to seek guidance with regard to filling the post of AEO, Saida Area.
7. By email dated 30 April 2014 to HFHRO, the HRO/APS proposed objective criteria for consideration, concluding that one of the AEOs who applied for transfer to the post of AEO for Saida Area rated higher than the Applicant based on factors such as: performance, number of years of service in the current post as AEO, number of years at a managerial level and compelling humanitarian reasons (care of two children). The HRO/APS also recommended that the hiring department interview both candidates.

8. By undated letter¹ to the Director of UNRWA Affairs, Lebanon (“DUA/L”), the Applicant again requested to be transferred to the post of AEO, Saida Area.

9. By email dated 6 May 2014, the Deputy Director of UNRWA Affairs, Lebanon (“D/DUA/L”) proposed to the HFHRO that, because there were two internal applications for transfer to the post of AEO, Saida Area, rather than advertising the post, a competitive process could be used internally for the selection.

10. By email dated 7 May 2014, the D/DUA/L directed the HFHRO to arrange for an interview of the two candidates adding that the most qualified candidate would be selected. The D/DUA/L also proposed the names of a few persons who could serve as members on the interview panel.

11. By email dated 16 May 2014 to the Chairman of the Area Staff Union (“C/ASU”), the Applicant sought his intervention and protested to having to go through an interview.

12. By email dated 19 May 2014 to the C/ASU and the Applicant, the D/DUA/L explained the basis for the interview, noting that the DUA/L and/or the FHRO have the discretion to fill the post either by a recruitment exercise or by a transfer.

13. By email dated 19 May 2014, the Applicant was invited to attend an interview for the post of AEO, Saida Area, on 29 May 2014.

¹ According to the Applicant, this letter was sent on 6 May 2014.
14. By email dated 27 May 2014, the second applicant for transfer to the post of AEO, Saida Area, declined to attend the interview. It was decided then to proceed with the interview of the Applicant.

15. On 30 May 2014, the Applicant was interviewed by a panel comprised of three members.

16. In its report dated 4 June 2014, the panel noted, *inter alia*, that:

   The candidate’s answers did not reveal the strong competencies needed to manage such a big area like Saida where we have around 20 schools; whereas at Central Lebanon Area there are around 13 schools. Furthermore, Saida Area is considered as more challenging than CLA because of the prevailing security situation in Saida camps. In addition, the candidate’s last periodic report for January 2013 was 2 (A Performance that does not fully meet the standards) and based on this, her probation period was extended for six months to show improvement in work. On May 2013, Ms. Masrieh was confirmed to her post with a rating of 3 (Satisfactory Performance).

17. The panel’s conclusion was that the Applicant did not have the competencies required to perform the duties of the post.

18. By email dated 20 June 2014, the Applicant was informed by the Human Resources Career Management Officer (“HRCMO”) that she was not found suitable for the post of AEO, Saida Area, and that the post would be advertised.

19. By emails dated 23 June 2014 and 11 July 2014 to the HRCMO, the Applicant stated that the interview was illegal and that she had the right to be transferred.

20. On 15 July 2014, the Applicant’s application was received by the UNRWA Dispute Tribunal (the “Tribunal”).

21. On 21 July 2014, the application was transmitted to the Respondent.

22. On 20 August 2014, the Respondent filed his reply.
Applicant’s contentions

23. The Applicant contends the following:

i) She entered the service of the Agency earlier than the other candidate and the interview was conducted in disregard of her date of entry;

ii) There was no basis for conducting the interview as the only other candidate declined to attend the interview; and

iii) The contested decision is baseless.

24. The Applicant seeks compensation for the “AGONIES AND FruSTRACTIONS” that she suffered as a result of the Agency’s decision.

Respondent’s contentions

25. The Respondent submits that:

i) The Applicant failed to submit a written request for decision review;

ii) The application is consequently not receivable.

26. The Respondent requests that the Tribunal dismiss the application.

Considerations

Preliminary issue

27. In accordance with Article 14 of the Tribunal’s Rules of Procedure, the Tribunal may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the Judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties. The Tribunal notes that, after the submission of her application, the Applicant filed an email dated 21 July 2014 from the HFHRO which was added to the case file and transmitted to the Respondent. The Tribunal accepted this email without instructing the Applicant to file a motion because its content was a mere repetition of the evidence already contained in the case file and there was no prejudice to the Respondent.
Main Issue

28. The Tribunal refers to Area Staff Rule 111.2 which provides that:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 111.1(A), shall, as a first step, submit a written request for a decision review:

(A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office…

29. Also relevant to this case is Article 8 of the Statute of the Tribunal providing that:

1. An application shall be receivable if:

   * * *

   (c) An applicant has previously submitted the contested administrative decision for decision review; and

   (d) The application is filed within the following deadlines:

   (i) Within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or

   (ii) Within 90 calendar days of the expiry of the relevant response period for the decision review if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to decision review;

   * * *

3. [...] The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.

30. The Tribunal is mindful of the jurisprudence of the United Nations Appeals Tribunal which has repeatedly held that the United Nations Dispute Tribunal does not have jurisdiction over complaints that were not the subject of an administrative review or management evaluation (Munir 2015-UNAT-522, Gehr 2013-UNAT-293 and Crichlow 2010-UNAT-035) and that this preliminary step must be exhausted before the jurisdiction of the United Nations Dispute Tribunal
can be invoked (Khashan 2015-UNAT-502, Bali 2012-UNAT-244, and Planas 2010-UNAT-049).

Has the Applicant submitted a written request for decision review?

31. The decision which the Applicant is contesting in her application is the denial of her request to be transferred to the post of AEO, Saida Area following an interview aimed at screening a suitable candidate for the post on a transfer basis. The Applicant claims that there was no basis for conducting the interview because she was the only internal candidate for the post since the other staff member declined to attend the interview.

32. The Applicant claims that her letter of 6 May 2014 to the D/DUA/L in support of her request for transfer is a written request for decision review. Indeed, in her application, the Applicant wrote that she requested a decision review on “Tuesday, May 06, 2014 1:27 PM”. However, just because the Applicant considers her letter of 6 May 2014 to be a written request for decision review does not make it so.

33. The record indicates that the Agency had not yet decided how it would fill the vacant post, nor responded with a yes or a no to the Applicant’s request for transfer when the Applicant allegedly submitted her request for decision review, i.e. the letter of 6 May 2014. It was on 7 May 2014, that the D/DUA/L proposed an interview of the two candidates requesting to be transferred to the vacant post. Furthermore, it was not until 19 May 2014 that the Applicant was invited to attend the interview scheduled for 29 May 2014 in order for the panel to assess her suitability for the post to which she requested to be transferred.

34. Reviewing the evidence in the file, the Tribunal also notes that the interview did not take place until 30 May 2014. The interviewing panel then found that the Applicant was not suitable for the post. The Applicant was informed of the panel’s decision on 20 June 2014. She confirms this date in her application, where she notes that she was notified of the Agency’s decision “via the email but not throughout a written letter on June 20th 2014” (emphasis in the application). Therefore, the Tribunal is at a loss as to how the Applicant’s letter of
6 May 2014 could be considered a written request for decision review when the Applicant was only notified of the Agency’s decision – subject of this application – on 20 June 2014.

35. The Tribunal, therefore, has to find that the Applicant did not comply with the requirements of Area Staff Rule 111.2(1) which provides for mandatory submission of a written request for decision review prior to submitting an application before the Tribunal.

36. The Applicant should know about her obligations as provided in the Area Staff Regulations and Rules. The Applicant has profusely mentioned the Staff Regulations and Rules in her written communications with and complaints to the Agency and ASU, yet she seems to have ignored the provisions of those very Staff Regulations and Rules regarding the mandatory submission of a written request for decision review before filing an application with the Tribunal. The Applicant is reminded of the jurisprudence of the United Nations Appeals Tribunal in Azzouz 2014-UNAT-432 confirming the non-receivability of an application where the applicant has failed to submit a written request for decision review.

37. Considering that the Applicant has not submitted a written request for decision review as required under Area Staff Rule 111.2(1) prior to filing an application before the Tribunal, and that the Tribunal has no jurisdiction to waive this requirement, the Tribunal finds that the application is not receivable.
Conclusion

38. For the reasons provided above, the application is dismissed.

__(Signed)________________
Judge Bana Barazi
Dated this 6th day of July 2015

Entered in the Register on this 6th day of July 2015

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