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

HAIMOUR and AL MOHAMMAD

v.

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

JUDGMENT

Counsel for Applicants: Amer Abu-Khalaf (LOSA)

Counsel for Respondent: Lance Bartholomeusz (DLA)
Introduction

1. Mamoun Fayez Al Mohammad and Bushra Rabei Haimour (the “Applicants”) appeal 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 terminate their appointments with the Agency effective 31 March 2014.

2. The UNRWA Dispute Tribunal (the “Tribunal”) notes that the applications are very similar, both citing the date of the impugned decision as 29 April 2014, asserting essentially the same claims and seeking similar relief, distinguished only by the name, date and signature of the individual Applicant. Given such similarity, the Tribunal considers that consolidating the applications will serve judicial economy and consistency without changing or affecting the rights of each party. The Tribunal has thus decided to join the cases.

Facts

3. Effective 1 June 2011, Mamoun Fayez Al Mohammad and Bushra Rabei Haimour entered the service of the Agency as Credit Extension Assistants, also known as Loan Officers, on fixed-term appointments, at Grade 9, in the Douma branch of the Microfinance Department (“MD”) of the Syria Field Office (“SFO”).

4. Effective 1 May 2012, Applicant Al Mohammad was transferred to the MD Al-Saida Zeinab branch due to the closure of the MD Douma branch. He was later transferred to the MD Al-Ammen branch upon the closure of the MD Al-Saida Zeinab branch. As of 1 April 2013, Applicant Al Mohammad was working with the Relief and Social Services Programme of the SFO. On 14 October 2013, he was suspended with pay pending the outcome of an investigation for possible misconduct.

5. Effective 1 October 2012, Applicant Haimour was transferred as Loan Officer to the MD Al-Ammen branch.
6. In November 2013, the MD of the SFO (“MD, SFO”) developed a projection of its operations and staff needs together with the MD in Headquarters. This projection indicated *inter alia* that 14 Loan Officer posts in the Damascus area needed to be abolished as of 1 April 2014. Accordingly, 37 staff members in this post category were evaluated during the first two weeks of December 2013 in order to identify the least efficient incumbents, who would be declared redundant. Applicant Al Mohammad obtained the second lowest score and Applicant Haimour obtained the fifth lowest score.

7. By separate letters dated 22 December 2013, the Head, Field Human Resources Office (“H/FHRO”) informed the Applicants that 18 posts, including their respective posts, would be abolished effective 31 March 2014 due to financial difficulties of the MD, SFO. The letter provides in relevant part:

I have to inform you that based on the evaluations of all MD staff members conducted at the beginning of this month, your post is one of the aforementioned posts. Consequently you are hereby declared provisionally redundant effective 23 December 2013. Should you not be successful in being appointed to an alternative post by 31 March 2014 your contract will be terminated and you will be separated from the Agency.

In accordance with the Agency’s policy on redundancy under Area Personnel Directive A/9, MD in coordination with the Human Resources Department (HRD) have identified suitable alternative posts for the redundant staff members. These posts are to be filled effective 1 February 2014 up to 31 March 2014 according to MD needs at the new branches located in Tartous, Latakla and Sweida, as provided in the attached list of vacancies.

You are kindly requested to review the attached list of vacancies, express your interest in three of them in a priority order, and provide Staff Relations Officer (SRO) … with your choices in writing on the attached form by close of business 5 January 2014. In case you are not interested in any of the offered vacancies please confirm by close of business 5 January 2014.

The appointments to the vacancies of the same functions and grade level will be made as lateral transfers based on expressed interest and the evaluation ranking in accordance with regulation 1.2.
8. The Applicants did not contact the SRO to express interest in any of the 23 identified alternative posts. However, Applicant Haimour participated in the recruitment process of two posts, i.e. Assistant Shelter Manager in February 2014 and Administration Officer-Relief Emergency in March 2014, but he was not selected for either.

9. On 5 February 2014, all redundant MD staff members were invited to a meeting with the Director of UNRWA Affairs/Syria (“DUA/S”) and the H/FHRO to discuss the difficulties caused by the potential job loss. The meeting concluded, among other things, that redundant staff should reconsider the offered alternative employment in new MD, SFO branches and that MD staff would have preferential treatment in all future recruitment processes.

10. On 9 February 2014, the H/FHRO held another meeting with two MD, SFO staff members who represented the redundant staff. The H/FHRO provided the staff members with a list of vacancies as of the end of January 2014. It was agreed that the two MD representatives would prepare an overview of the qualifications of the redundant staff and would visit all department heads to discuss employment opportunities.

11. Out of the 18 staff members whose posts were declared provisionally redundant, eight staff members – including the Applicants – had not been appointed to an alternative post by 12 April 2014.

12. By separate letters dated 29 April 2014, the H/FHRO informed the Applicants that they were separated from service effective 31 March 2014 as they had not been appointed to alternative posts.

13. On 18 May 2014, Applicant Al Mohammad and Applicant Haimour filed separate applications with the Tribunal contesting the decisions to abolish their respective posts in the MD, SFO. The applications were registered under case numbers UNRWA/DT/SFO/2014/017 and UNRWA/DT/SFO/2014/019, respectively. In Judgment UNRWA/DT/2015/028, the Tribunal dismissed the applications as not receivable.
14. On 25 May 2014, the Applicants separately requested review of the decision to terminate their appointments from the Agency effective 31 March 2014.

15. On 5 August 2014, Applicant Haimour and Applicant Al Mohammad filed separate applications with the Tribunal contesting the decision to terminate their appointments from the Agency effective 31 March 2014. The applications were registered under case numbers UNRWA/DT/SFO/2014/036 and UNRWA/DT/SFO/2014/037, respectively.

16. On 4 September 2014, the Respondent filed separate replies to the applications. The Tribunal transmitted the replies to the Applicants on 7 September 2014.

17. By Order No. 020 (UNRWA/DT/2015) dated 16 February 2015, the Tribunal ordered the Respondent to submit an Arabic translation of the reply to Applicant Haimour’s application.

18. By Order No. 021 (UNRWA/DT/2015) dated 2 March 2015, the Tribunal ordered the Respondent to submit an Arabic translation of the reply to Applicant Al Mohammad’s application.

19. On 16 March 2015, the Respondent complied with Order No. 020 (UNRWA/DT/2015) and submitted the requested Arabic translation of the reply. The Tribunal transmitted the translation to Applicant Haimour on the same day.

20. On 17 March 2015, the Respondent complied with Order No. 021 (UNRWA/DT/2015) and submitted the requested Arabic translation of the reply. The Tribunal transmitted the translation to Applicant Al Mohammad on 18 March 2015.

**Applicants’ contentions**

21. The Applicants contend:

   i) They were not given reasonable notice prior to the decision to terminate their services with the Agency;
ii) The Administration did not make a “diligent” effort to find other suitable posts for the Applicants;

iii) The Administration did not “consider qualifying” the Applicants for alternative posts;

iv) They suffered moral damages; and

v) The situation in Syria was not considered.

22. Applicant Haimour also contends that the Administration did not take into account the Regulations concerning the safety of its staff members when it offered to transfer her to other areas in Syria, such as Latakia, Tartous and As-Suwayda. She also claims that the Administration did not take into account her personal situation when she was offered a transfer outside Damascus.

23. Applicant Al Mohammad also contends that he was not notified in writing of the decision to declare his post redundant.

24. The Applicants request:

i) Rescission of the decision to terminate their appointments and reinstatement in their former posts or any other suitable posts; and

ii) Alternatively, to be reinstated at a lower grade with salary protection until the end of the Syrian crisis.

25. Applicant Haimour requests compensation for the period in which she was not working as well as compensation in the amount of one-year salary for moral damages that she suffered as a result of the Agency’s decision. She notes that she is the sole breadwinner of her family.

26. Applicant Al Mohammad requests moral damages on the basis that he is the sole breadwinner of his family.
Respondent’s contentions

27. The Respondent contends:

   i) The decision to terminate the Applicants’ employment contracts for reason of redundancy was properly effected;

   ii) The Syrian crisis, which started in March 2011, greatly affected the MD, SFO and caused a genuine redundancy situation;

   iii) The Agency notified the Applicants of its decision to abolish their posts by letter dated 22 December 2013;

   iv) The Applicants did not express interest in any of the 23 alternative posts identified in the letter dated 22 December 2013. Applicant Al Mohammad did not apply to any of the posts that became vacant during the period of provisional redundancy. Applicant Haimour participated in the selection process for two posts but was not selected for any of them;

   v) The Agency made genuine attempts to locate suitable alternative posts for the Applicants during the three-month period of provisional redundancy;

   vi) While the Agency failed to give the appropriate termination notice to the Applicants, it agreed to pay compensation in lieu of notice;

   vii) The Agency paid due regard to the special circumstances in Syria, including the safety and security of its staff; and

   viii) The remedies sought by the Applicants have no legal basis.

28. In relation to Applicant Haimour’s claim that her personal situation was not considered, the Respondent submits that the personal circumstances of a staff member are not decisive in finding a suitable alternative placement. Other factors need to be considered such as availability of posts and the staff member’s qualifications. Indeed, it was not possible to offer a MD post in Damascus to any of the staff members who were declared redundant.
29. The Respondent requests the Tribunal to dismiss the applications.

Considerations

30. In the present cases, the Applicants contest the decision to terminate their appointments from the Agency effective 31 March 2014 for reasons of redundancy.

31. The Tribunal clarifies that while the termination of the Applicants is a consequence of the decision to declare their respective posts redundant, the Tribunal will not examine the legality of the abolishment of their posts. In its Judgment No. UNRWA/DT/2015/028, the Tribunal held that the applications against the decisions to declare their posts redundant were not receivable. Therefore, the only decision to be examined is the termination of the Applicants’ appointment.

32. Area Staff Regulation 9.1 provides that:

The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.

33. Area Staff Regulation 9.3 states that:

(A) A staff member whose temporary appointment is to be terminated shall be given not less than 14 days’ written notice of such termination or such notice as may otherwise be stipulated in his/her letter of appointment.

(B) In lieu of the notice period, the Commissioner-General may authorise compensation calculated on the basis of salary and allowances which the staff member would have received had the date of termination been at the end of the notice period.

34. Area Staff Rule 109.1 provides that:

1. Termination is a separation initiated by the Agency under staff regulation 9.1, by giving to a staff member a written notice of termination as required under staff regulation 9.3 […].

35. Area Staff Personnel Directive No. A/9/Rev.9 (“PD A/9”) at paragraph 15.1 explains that redundancy arises, inter alia, when a post is eliminated. The text sets
out the Agency’s procedures when such a redundancy occurs. In relevant part the
PD states:

15.2. In such circumstances, a staff member is declared
provisionally redundant and will be so notified in writing.

* * *

15.4. The purpose of the period of provisional redundancy is to use
the time (usually three months)[] between the decision to abolish
an occupied post and its actual abolition to find a suitable
placement for the displaced official or, failing that, to give the
appropriate termination notice required by the staff member’s letter
of appointment.

15.5. It is imperative that redundancy cases be well documented.
During the period of provisional redundancy, reasonable effort
must be made to find the redundant staff member a suitable
placement. It is useful in this regard to maintain a list of all posts
that became vacant during the period of provisional redundancy
and to show why the staff member was not assigned to any of
them. The possibility of providing training to qualify redundant
staff members for alternative employment should be considered
seriously.

15.6. If no suitable post can be found for the staff member before
expiry of the notice of termination given in accordance with Staff
Rule 109.1, the staff member is separated for reason of redundancy
and qualifies for payment of termination indemnity in accordance
with Staff Rule 109.9 as appropriate.

36. The Tribunal recalls that by separate letters dated 22 December 2013, the
Applicants were informed that their posts would be declared redundant effective
23 December 2013 and that their contracts would be terminated if they were not
appointed to alternative posts by 31 March 2014.

37. According to PD A/9, “during the period of redundancy, reasonable effort
must be made to find the redundant staff member a suitable placement”. The
Tribunal notes that the letter dated 22 December 2013 included a list of 23
suitable alternative posts for the redundant staff members. By this letter, the
Administration requested the staff members to express their interest in the
alternative posts and provide the SRO with their choices by 5 January 2014.
38. The evidence shows that the Applicants did not express interest in any of the 23 alternative posts identified by the Administration in the 22 December 2013 letter. Applicant Al Mohammad did not apply for any other posts that became vacant during the period of provisional redundancy. Applicant Haimour participated in the recruitment process for two posts but was not successful.

39. The Applicants contend that the Administration did not make diligent efforts to find other suitable posts for the Applicants and that the Administration did not “consider qualifying” them for alternative posts. The Tribunal notes that apart from the list of 23 suitable alternative posts attached to the letter dated 22 December 2013, two meetings took place, on 5 February 2014 and on 9 February 2014, between the redundant MD staff members or their representatives and the Administration to discuss the difficulties caused by potential job loss and the need to support the redundant staff. During these meetings, the Administration requested the redundant staff to reconsider the offered alternative employment in new branches and, at the second meeting, the H/FHRO provided the staff members’ representatives with a list of vacancies as of end January 2014. Yet, the Tribunal notes that the Applicants failed to express interest in any of the 23 alternative posts identified by the Administration. Furthermore, Applicant Al Mohammad did not apply for any of the other vacancies during the period of redundancy and Applicant Haimour was not successful in her two applications. Therefore, the Tribunal finds that the Agency made reasonable efforts to find the Applicants suitable placements. The Tribunal finds that while the available posts in the same occupational group were located outside of the Damascus area, the Administration was not compelled to offer the Applicants an alternative post in Damascus, particularly in view of the MD operational situation in the SFO.

40. The Applicants argue that the situation in Syria was not taken into account. However, the Tribunal finds that the Agency paid due regard to the special circumstances in Syria. The evidence shows that the MD, SFO was forced to take certain measures to mitigate the consequences of its financial loss caused by the Syrian crisis. Those measures included the non-renewal of a number of daily paid contracts in September 2012, the closure of almost all of the MD, SFO branches
in the Damascus area in 2012 and the opening of new branches in Tartous, As-Suwayda and Latakia in June 2013, locations that were considered safer than the Damascus area for the continuation of the MD, SFO’s operations.

41. Applicant Haimour contends that neither her safety nor her personal situation were considered when she was offered to be transferred outside of Damascus. The Tribunal finds that the Agency considered the safety of its staff when it relocated its MD branches outside of the Damascus area. Furthermore, the Tribunal holds that while the personal circumstances of a staff member may be relevant in deciding whether an alternative placement is suitable, this is not the only factor to be considered. Rather, other factors such as the availability of posts and the qualifications of the staff member take priority. Indeed, Applicant Haimour did not express interest in any of the vacant posts outside of Damascus area, and while she applied for vacant posts in Damascus, she was not selected for any of them.

42. In light of the above, the Tribunal finds that as the Applicants were unsuccessful in obtaining alternative posts during the period of redundancy, their appointments with the Agency were properly terminated on 31 March 2014.

43. The Applicants contend that they were not given a reasonable notice period prior to the decision to terminate their services with the Agency. Indeed, on 29 April 2014, the Applicants were informed of the decision to separate them from service effective 31 March 2014 as they had not being appointed to alternative posts. However, on 22 December 2013, the Applicants had already been informed that their contracts would be terminated if they were not appointed to alternative posts by 31 March 2014. Therefore, the Applicants were well aware of the upcoming termination of their contracts. In this regard, the Respondent concedes that the Agency failed to give the appropriate termination notice to the staff members separated for reason of redundancy. The Tribunal notes that the Agency agreed to pay compensation to the concerned staff members, including the Applicants, in lieu of the notice period.
44. Considering that the decision to terminate the Applicants’ appointments with the Agency effective 31 March 2014 is lawful, the Tribunal finds that the relief sought by the Applicants has no basis in fact or in law.

Conclusion

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

The applications are dismissed.

(Signed)________________________
Judge Jean-François Cousin
Dated this 24th day of January 2016

Entered in the Register on this 24th day of January 2016

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