Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

KHADER

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 Jumana Abdul Qader Mohammad Khader (the “Applicant”) against the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), (1) to abolish her post of Senior Staff Nurse at Irbid New Health Centre, (2) declare her provisionally redundant and (3) offer her a transfer to the post of Senior Staff Nurse at Jerash Camp Health Centre.

Facts

2. On 17 June 1999, the Applicant entered the service of the Agency as a daily-paid Staff Nurse at Irbid Health Mobile Team No.2, in Jordan. On 1 January 2012, following several extensions and upgrades, the Applicant was appointed as a Senior Staff Nurse (“SSN”) at Irbid Camp Health Centre, at Grade 9, Step 13.

3. When Irbid Camp Health Centre and Irbid Town Health Centre merged into Irbid New Health Centre (“INHC”) on 24 December 2013, the Applicant carried on with her duties as a SSN at INHC.

4. In July of 2014, the Health Department completed a memorandum (the “memo”) explaining the restructuring of the various Health Centres. The memo noted that the merging of the two Irbid Health Centres would require additional staff of INHC to be redeployed to medical units in Jerash Health Centre, Duleil and Sukneh Camp.

5. On 30 October 2014, the Head, Field Human Resources Office (“H/FHRO”) informed the Applicant that, as a result of the creation of INHC, her post at INHC would be abolished effective 1 November 2014. The H/FHRO further explained that the Applicant was declared provisionally redundant, however, during the notice period the Agency would attempt to find her a suitable alternative post where she could be transferred. The letter also explained that if no suitable alternative post could be found, the Applicant would be terminated effective 31 January 2015.

6. On 6 November 2014, the Applicant submitted a request for review of the decisions to abolish her post and declare her provisionally redundant.
7. By letter dated 10 November 2014, the H/FHRO informed the Applicant that the Agency had found a suitable alternative post for her as a SSN in Jerash Camp Health Centre (“JCHC”), at the same Grade and Step, effective 16 November 2014. The H/FHRO noted that if the Applicant were to accept this transfer by signing the letter and returning it to the Administration by 13 November 2014, her provisional redundancy would be withdrawn.

8. On 13 November 2014, the Applicant wrote the following comment by hand on the above stated letter “I accept the temporary transfer to Jerash until the determination of my case which I will take from one office to another at the United Nations.” The H/FHRO also annotated the letter on 13 November 2014 stating:

This proposal is not temporary and is not subject to the conditions you indicate as a staff member. What we informed you [and] discussed was that your official transfer in accordance with the Rules [and] Regulations would be Jerash. However, the Chief Area Office Irbid kindly suggested to look into your request to temporarily transfer to Waqqas for a temporary replacement of someone on [Special Leave Without Pay].

9. On 26 November 2014, the Applicant submitted a request for review of the decision to transfer her to JCHC.

10. On 4 December 2014, the Director of UNRWA Operations, Jordan (“DUO/J”) sent the Applicant his response to her request for review of the two contested decisions. The DUO/J explained the reasons for declaring the Applicant’s post provisionally redundant and for offering her a transfer to JCHC. In conclusion, the DUO/J affirmed the contested decisions.

11. On 13 January 2015, the Applicant re-submitted to the Administration the letter dated 10 November 2014, accepting her transfer to JCHC. In addition to her comment referred to in paragraph 8 above, the Applicant added the following comment by hand: “I accept the transfer to Jerash provided that I do not lose my right to appeal”.

12. On 1 February 2015, upon the Applicant’s request, the Agency temporarily assigned her to Waqqas Health Centre until 30 April 2015, to replace a Staff Nurse on Special Leave Without Pay (“SLWOP”).

13. On 2 March 2015, the Applicant submitted an application to the UNRWA Dispute Tribunal (the “Tribunal”).
14. On 1 April 2015, the Respondent filed his reply.

15. By Order No. 042 (UNRWA/DT/2015) dated 21 April 2015, the Tribunal ordered the Respondent to translate his reply from English into Arabic on or before the close of business on 21 May 2015.

16. On 6 October 2015, the Respondent submitted the late translation of his reply, which was forthwith transmitted to the Applicant.

17. On 16 November 2015, the Applicant filed a request for leave to file observations on the Respondent’s reply.

18. On 1 December 2015, the Applicant’s request was transmitted to the Respondent. No opposition was filed.

19. By Order No. 127 (UNRWA/DT/2015) dated 13 December 2015, the Tribunal granted leave to the Applicant to file observations on or before the close of business on 31 December 2015.

20. On 31 December 2015, the Applicant submitted her observations on the Respondent’s reply. The observations were transmitted to the Respondent on 5 January 2016.

**Applicant’s contentions**

21. The Applicant contends:
   
   i) The decisions to declare her post redundant and to transfer her to another post “blatantly violate” Area Staff Regulation 4.3;
   
   ii) Given that the Agency merged the two Irbid Health Centres in December 2013, she should have been notified of the decision to declare her post redundant before 30 October 2014;
   
   iii) The Respondent’s promise to find the Applicant a suitable alternative post was a “meaningless promise”;
   
   iv) She was threatened with termination if she did not accept the transfer;
v) The contested decisions are defective; and

vi) The contested decisions caused her emotional distress and financial hardship.

22. The Applicant requests the Tribunal to:

   i) Hold a hearing and summon the former and present H/FHRO to clarify the contested decisions and to summon any other witness the Tribunal deems necessary;

   ii) Order the Respondent to produce a map showing the distance from the Applicant’s residence to JCHC and to INHC;

   iii) Order the Respondent to pay her financial compensation for past and future commuting expenses;

   iv) Rescind the contested decisions and return her to her former duty station;

   v) Order the Respondent to pay her moral damages for the emotional distress caused by the “irrational, irregular, and illegal warning of terminating her services”; and

   vi) Encourage the Agency to apologise for the humiliating treatment she was subjected to.

**Respondent’s contentions**

23. The Respondent contends:

   i) The decision to abolish the Applicant’s post was a proper exercise of the Agency’s discretionary authority;

   ii) The Agency’s offer to the Applicant to transfer her to the post of SSN in JCHC was in full compliance with the applicable regulatory framework; and

   iii) The remedies sought by the Applicant are “inappropriate or unsubstantiated”.

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

Preliminary issue

The Respondent’s late filing of his translated reply

25. The Tribunal recalls that Order No. 042 (UNRWA/DT/2015) dated 21 April 2015, was in and of itself a reminder to the Respondent that he had failed to comply with the Tribunal’s proposed amendment that requires that, if an application is submitted in Arabic, the Respondent’s reply shall be submitted in English together with the translation in Arabic. Nevertheless, the Tribunal ordered the Respondent to submit an Arabic translation of the reply by 21 May 2015. However, the Respondent failed to comply with that order and it was not until 6 October 2015 that the translation was produced. The Tribunal notes that the Respondent did not provide any explanation for the five-month delay. The Tribunal finds the Respondent’s neglect unacceptable and reminds him that when an application is submitted in Arabic, he is required to adhere to the proposed amendment per Article 33 (2) of the Rules of Procedure and submit a translation of his reply within two weeks from the date of his English reply.

Did a genuine redundancy situation exist?

26. Organization Directive No. 15 (“OD 15”), at paragraph 16, in relevant part provides:

[...] Field and Liaison Office Directors shall be authorized to vary the staffing tables of their Departments and Offices, with in the case of Field Office Directors appropriate consultation with Headquarters Heads of Departments and according to procedures prescribed by Comptroller, by -

(1) deleting redundant posts;

(2) transferring posts from one location to another;

(3) deleting posts and establishing other posts in their place, provided no additional cost is occasioned thereby, no staffing standard or post classification prescribed under paragraph 13 of this Directive is exceeded and no post is established otherwise than in accordance with a standard post description.

27. Based on the above, the Agency has the discretionary power to reorganize and restructure departments and posts when its needs and objectives require it. Deleting redundant posts and establishing other posts in their place are part of any restructuring
exercise. It is not for the Tribunal to tell the Agency how to manage its operations. However, the exercise of the Agency’s managerial prerogatives is not absolute and can be reviewed by the Tribunal for bias, impropriety or lack of due process. Absent extraneous factors, maladministration or breach of due process, the Tribunal will not interfere.

28. The merging of two Irbid Health Centres in December 2013 into INHC is claimed by the Respondent to be a genuine and bona fide restructuring operation. This claim, supported by evidence filed by the Respondent, is not challenged by the Applicant. The Tribunal is satisfied that the decision to merge the two Health Centres was a genuine exercise and that there existed a genuine redundancy situation, as evidenced by the record.

*Did the Agency violate its regulatory framework in abolishing the Applicant’s post and declaring her provisionally redundant?*

29. Having determined that a genuine redundancy situation existed, the Tribunal will now review the Agency’s decision to abolish the Applicant’s post and declare her provisionally redundant. The Applicant contends that the decisions blatantly violate Area Staff Regulation 4.3. The Regulation provides:

> 4.3 Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity.

30. Area Staff Personnel Directive No. A/9/Rev.9 (“PD A/9”), on Separation from Service, was in effect at the material time and set out the Agency’s policy on redundancy. In relevant part, PD A/9 states:

> 15.1 Redundancy arises when a post is
>  
> 15.1.1. eliminated;
>  
> [...]  

> 15.2 In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. [...] Where there are two or more posts of similar category, title and post description in that section of the staffing table, the least efficient incumbent will be redundant or, if the incumbents are of equal efficiency, the incumbent with the shortest period of service.

> [...]
15.4 The purpose 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.

31. According to the memo reproduced in Annex 15, the merger of the two Irbid Health Centres and the creation of INHC would result in the abolishment of 11 posts, including *inter alia* a dental surgeon, a medical officer and nurses. As each of the two former Irbid Health Centres had a SSN position and as only one such post had been allocated to INHC, one SSN position had to be abolished. Therefore, the Respondent had to decide which of the two SSN posts would be declared redundant.

32. The Applicant claims that the post of her colleague, the other SSN, should have been declared redundant and not hers. In his letter dated 4 December 2014 to the Applicant, the DUO/J referred to PD A/9 to explain why the Applicant’s post was declared redundant and not her colleague’s. Citing paragraph 15.2 of PD A/9, the letter stated:

> Please note that a review of the records shows, in terms of (i) efficiency, both your performance and the other staff member’s were considered satisfactory and you both received appreciation letters. Having noted that you were both equal in efficiency, the Agency turned to the second criteria [sic] that applies when considering transfers (ii) period of service.

> A review of the records shows that your Service Computation Date (SCD) is 17/06/1999 while the other staff member’s SCD is 16/05/1997. i.e. you were the incumbent with the shortest period of service and accordingly you were declared provisionally redundant.

33. As the Applicant’s period of service was shorter than that of her colleague, per paragraph 15.2 of PD A/9, it was her post that was declared provisionally redundant. The Tribunal sees no blatant violation of Area Staff Regulation 4.3 or malice on behalf of the Agency in abolishing the Applicant’s post and declaring her provisionally redundant.

34. The Tribunal recalls that when a staff member contests the Agency’s stated motives, the jurisprudence of the United Nations Appeals Tribunal (the “UNAT”) is clear that the burden of proving prejudice or improper motivation rests with the Applicant. Given that the Applicant has not provided any evidence that the decisions to abolish her post and to declare her provisionally redundant were tainted by any procedural irregularities or prejudice, the Tribunal will dismiss this contention.
Did the Agency make a reasonable effort to find the Applicant a suitable alternative post?

35. Having determined that the decision to abolish the Applicant’s post and declare her provisionally redundant was done in accordance with the Agency’s regulatory framework, the Tribunal will now consider whether the Agency made a genuine effort to find the Applicant a suitable alternative post as required by PD/A/9.

36. The Applicant claims that “the promise given by the Respondent to exert an effort of finding a post for her deserved a significant consideration but it was a meaningless promise with no value.” Indeed, as per PD A/9, the Agency is expected to make reasonable efforts, usually within three months of a staff member’s post being declared provisionally redundant, to find him or her a suitable alternative post, and if it cannot find one then the staff member is to be terminated.

37. A suitable post per PD A/9 at paragraph 15.7.1 is described as “a post in the same or similar occupation group with the same grade and the same salary and increments for which the staff member is qualified in most aspects.” The Agency’s duty to find a suitable alternative post for the Applicant is also reflected in the wording of the letter she received from the H/FHRO on 30 October 2014: “During the period of your provisional redundancy, the Agency will exert all possible efforts to find an alternative suitable post to which, you may be transferred.” The Tribunal notes that the Agency acted with efficiency on 10 November 2014, in locating a suitable alternative post for the Applicant with no change to her Grade or Step in JCHC.

38. Based on the above, the Tribunal finds that the Applicant’s contention that the Respondent’s promise was “meaningless and of no value” is baseless. Therefore, the Tribunal will dismiss this contention as well.

Was the Applicant “intimidated” or “threatened” into accepting the transfer to JCHC?

39. Area Staff Regulation 1.2 provides:

   Staff members are subject to the authority of the Commissioner-General and to assignment by him to any of the activities or offices of the Agency in or outside the area of its operations.

40. The Jordan Field Staff Circular No. J/30/2012 on transfers provides:
1. In accordance with Area Staff Regulation 1.2, the Commissioner-General or his/her delegate representative has the full authority to transfer any staff member in the best interest of the Agency. In JFO the authority to transfer has been delegated to the Field Human Resources Officer.

2. The JFO management can initiate staff transfer to achieve the highest degree of efficiency and effectiveness in managing the Agency’s workforce.

41. The Applicant claims that she was threatened by the management for two months to accept the transfer to JCHC. In her application she wrote that “psychological pressures were continually put over [her] to compel her to comply with the second contested decision, and sign without reservation or comment.” The Tribunal does not find her claim credible because she did comment (writing that she accepted the “temporary transfer”) and signed the copy three days after she received it, on 13 November 2014. The Tribunal has examined the record carefully and has not found any overt or implied threat against the Applicant. As an example, the Tribunal refers to the letter of the H/FHRO, stating in relevant part:

During the period of your provisional redundancy, the Agency will exert all possible efforts to find an alternative suitable post to which, you may be transferred. In case our efforts are not successful, the Agency will have no other alternative but to terminate your contract in accordance with Staff Rule 109.1.

What the Applicant considers as a threat of termination, the Tribunal considers as a transparent effort by the H/FHRO to explain the situation to the Applicant, with reference to the applicable Staff Rule.

42. As the Applicant has not provided any evidence of impropriety, bias or prejudice on the part of the Respondent regarding her transfer to JCHC, the Tribunal determines that the decision to transfer the Applicant to JCHC is not tainted by error of law or procedural irregularity, prejudice or extraneous factors.

Applicant’s other contentions

Request for a hearing

43. The Applicant has requested that the Tribunal hold a hearing and call witnesses to explain the circumstances surrounding the Respondent’s decisions. The Tribunal is of the

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1 Given that Annex 8 contains a comment from the H/FHRO dated 13 November 2014, the Tribunal is satisfied that the Applicant supplied the Agency with the signed copy on that date.
opinion that the evidence in the file is sufficient for the case to be determined on its merits without need for a hearing or the calling of witnesses. The Applicant is reminded that she bears the burden of proof and that she was given an ample opportunity to provide evidence in support of her allegations in the form of her observations.

Request for production of a map

44. The Applicant has also requested that the Tribunal order the Respondent to produce a map showing the location of JCHC and its distance from her residence as compared to her previous duty station. The Applicant is again reminded that the burden of proof is on her, and it was up to her to have provided such a map in her supplemental filing. The Tribunal notes, however, that a perfunctory search on Google Maps indicates that the approximate distance from the town of Irbid, where her former duty station and home are located, to the town of Jerash, where her new duty station is located, is approximately 35 kilometres.

Travel expenses

45. The Applicant claims that her commute to the JCHC has caused her to incur expenses in the amount of 200 Jordanian Dinars\(^2\) a month. The Tribunal notes that the Administration’s discretion to appoint, transfer and promote staff has repeatedly been confirmed by the jurisprudence of the UNAT. In Kamunyi 2012-UNAT-194, at paragraph 3, the UNAT held:

[The UNAT] holds that it is within the Administration’s discretion to reassign a staff member to a different post at the same level and that such a reassignment is lawful if it is reasonable in the particular circumstances of each case and if it causes no economic prejudice to the staff member.

46. In support of her request for financial compensation, the Applicant has quoted Area Staff Rule 107.1. Area Staff Rule 107.1 in relevant part states:

1. Subject to the conditions laid down in these rules, the Agency shall pay travel expenses of a staff member under the following circumstances:

   (A) When he/she is required to travel on official Agency business[.]

The Tribunal notes that the travel expenses referred to in the Rule above cover the travel of staff members outside their duty station, not their regular commute from their residence to

\(^2\) 200 Jordanian Dinars is equivalent to USD$283.
their duty station. The Area Staff Regulations and Rules do not provide for the payment of or compensation for the cost of daily commute to work. In any case, the Applicant has failed to provide any evidence of the travel expenses that she has allegedly incurred since May 2015 when she took up her post in JCHC. The Applicant is once again reminded that it is her burden of proof and she must substantiate her allegations.

Applicant’s observations

47. In her observations, the Applicant repeated the contentions she presented in her application, yet with more indignation that her post – not her colleague’s – was declared redundant and that she was transferred to JCHC. The Applicant stressed “the magnitude of threats” and pressures exerted by the Respondent on her to accept the transfer to JCHC. The Tribunal sees no threat - overt or implied - in the exchange of emails between managers or in any of the correspondence she has received from the Agency. The Applicant seems to view the Agency’s practice of declaring a staff member provisionally redundant akin to the Agency making threats. The exercise of redundancy and transfer which has been distorted into an exercise of “threats” and “humiliation” by the Applicant is basically simple: the Applicant’s post was declared redundant, the Applicant was offered a transfer and given the choice to accept or refuse. The Tribunal is satisfied that the Agency acted in line with procedure and did not humiliate or threaten the Applicant. Rather it secured employment for her in a region where jobs are very scarce.

Abuse of process

48. Article 10(6) of the Tribunal’s Statute states:

Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

The Applicant mentioned twice that costs should be awarded against the Respondent and she accused the Respondent of abuse of process. It is clear that the Applicant does not understand what these two notions mean. Black’s Law Dictionary defines “abuse of process” as “the improper and tortious use of a legitimately issued court process to obtain a result that is either

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3 The Tribunal notes that the Applicant submitted with her application a series of emails where she was not the intended recipient or included on the distribution list.
unlawful or beyond the process’s scope”. An illustrative example of a party abusing the proceedings would be the filing of a frivolous lawsuit or inundating the Tribunal with an inordinate amount of pleadings when no cause of action actually exists. That is to say, that the party filing superfluous and unrelated pleadings would be abusing the process, and therefore liable for costs associated with wasting the time and resources of their opposition and the Tribunal. The Respondent, by simply filing his reply together with evidence, has in no way, shape or form abused the process.

Request to strike UNRWA DT jurisprudence

49. The Applicant refers to jurisprudence quoted by the Respondent in his reply, specifically Abu Khurj (UNRWA/DT/2015/020) and requests the Tribunal to strike it from the record because she could not find it on the Tribunal’s website. The Tribunal cannot ignore jurisprudence or strike legal citations on the ground that the Applicant could not locate the Judgment. All Judgments of the Tribunal are published on the Tribunal’s internet and intranet sites. The Tribunal will also not disregard paragraph 31 of the Respondent’s reply simply because the Applicant finds it irrelevant.

Is there any legal basis for the Applicant’s request for relief?

50. The Applicant is claiming financial compensation for the emotional distress caused by the impugned decisions.

51. Having determined that the Respondent’s decisions abolishing the Applicant’s post and offering her a transfer have been properly made and that they were not tainted by error of law, procedural irregularity or bias, the Tribunal finds that there is no basis in fact or in law to reverse the impugned decisions.

52. Furthermore, as the Applicant has not provided any evidence of psychological distress, the Tribunal finds that there is no legal basis for any financial compensation. As held by the UNAT in Zhouk, No. 2012-UNAT-224, at paragraph 17:

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4 Bryan Garner, *Black’s Law Dictionary* (West Publishing, 2009), p.11. *The Restatement (Second) of Torts* § 682 (1977), further explains abusing the process as “One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.”
Compensation may only be awarded if it has been established that the staff member actually suffered damages. This Court will not approve the award of compensation when absolutely no harm has been suffered. Moral damages may not be awarded without specific evidence supporting the award.

53. Finally, the Applicant requests the Tribunal to encourage the Respondent to apologise for the insulting treatment he subjected her to and the threats to terminate her employment if she did not accept the transfer. Apart from the fact that the Applicant failed to establish that she suffered threats or humiliation at the hands of the Respondent, the Tribunal will not encourage any apology because the very essence of an apology is that it has to be voluntary.

Conclusion

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

(Signed)

Judge Bana Barazi
Dated this 28th day of February 2016

Entered in the Register on this 28th day of February 2016

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