AL NOUNOU

v.

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

JUDGMENT

Counsel for Applicant:
Diab Tabari

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Fadia Al Nounou (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 select her for the post of Human Resources Associate A (Recruitment), Human Resources Department, Lebanon Field Office.

Facts

2. Effective 13 June 1994, the Applicant entered the service of the Agency as a Personnel Clerk at Grade 7, on a Temporary Indefinite Appointment. Effective 1 December 1996, the Applicant was promoted to Grade 8. Following the restructuring of the Human Resources Department, Lebanon Field Office (“HRD/LFO”), the Applicant’s post was re-titled to Human Resources Assistant B effective 1 August 2010.

3. On 24 January 2014, the Agency issued vacancy announcement number 03/2014 for the project founded post of Human Resources Associate A (Recruitment), HRD/LFO at Grade 12.

4. The Agency received 254 applications in response to the vacancy announcement. After the screening of the applications, 28 candidates were invited to a written technical test for 23 June 2014. Eight candidates passed the technical test and were invited for a computer test on 20 August 2014. The Agency set the benchmark at 50 percent for the technical test and a “pass/fail” for the computer test. The Applicant scored 79.5 percent on the technical test and passed the computer test. She was considered an internal candidate.

5. Considering the results of both tests, seven candidates, including the Applicant, were invited for an interview to be conducted on 11 September 2014. The interviews were conducted by a panel comprised of the Deputy Director, UNRWA Affairs Lebanon (“D/DUA/L”), the Principal, Siblin Training Centre (“P/STC”) and the Field Human Resources Officer (“FHRO”).
6. On 23 October 2014, the interview panel issued its recruitment report. The panel recommended the appointment of a candidate to the post and the placement of three candidates, including the Applicant, on a roster in order of ranking. The Applicant was placed second on the roster. The panel’s recommendations were approved by the Director of UNRWA Affairs, Lebanon (“DUA/L”).

7. According to the Applicant, she was verbally informed on 29 October 2014 of the decision not to select her for the post of Human Resources Associate A (Recruitment), HRD/LFO.

8. By email dated 10 November 2014 to the D/DUA/L’s office, the Applicant challenged the recruitment process and requested review of the decision not to select her for the post of Human Resources Associate A (Recruitment), HRD/LFO.

9. By email dated 12 November 2014, the Applicant was officially informed of the decision not to select her for the post of Human Resources Associate A (Recruitment), HRD/LFO, and to place her, instead, on the employment roster valid until 22 October 2016.

10. On 25 November 2014, the Grievances Officer from the DUA/L’s Office replied to the Applicant’s email dated 10 November 2014. After reviewing the recruitment process in light of the Applicant’s claims, the Grievances Officer concluded that the recruitment process had been properly conducted.

11. On 15 January 2015, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on the same day.

12. On 13 February 2015, the Respondent filed his reply to the application including several annexes. The Respondent requested that Annex 9, namely the recruitment report, be only transmitted to the Applicant in a redacted form as it contained “information of candidates not party to or referred in the [a]pplication”.

Page 3 of 11
13. By email dated 15 February 2015, the Tribunal transmitted the reply to the Applicant noting that an Order would be issued later on in relation to the Respondent’s request.

14. By Order No. 008 (UNRWA/DT/2016) dated 3 February 2016, a redacted version of the recruitment report was transmitted to the Applicant for her comments.

15. On 9 February 2016, the Applicant submitted her comments in relation to the recruitment report.

16. By Order No. 011 (UNRWA/DT/2016) dated 9 February 2016, the Applicant’s comments were transmitted to the Respondent who was ordered to provide a response to the Applicant’s submission.

17. On 24 February 2016, the Respondent provided his response to the Applicant’s comments. The response was transmitted to the Applicant.

**Applicant’s contentions**

18. The Applicant contends:

   i) The results of the technical tests should not have been shared with the panel prior to the interviews as this could have influenced their recommendations;

   ii) The technical test was open to external candidates in order to include in the selection process a “daily paid on SSA”;

   iii) The “usual practice” is to advertise posts internally. However, this post was advertised both internally and externally. An external candidate who was not a staff member and who had “very little experience in HR” was selected;

   iv) While the selection process should be confidential, the selected candidate was aware of the interview results two weeks prior to the completion of the recruitment report;
v) The response to her email dated 10 November 2014 was completed by a person who lacks the authority to reply on behalf of the DUA/L; and

vi) The score given to her in the interview does not reflect what was written in the analysis of the interview. While the interview report analysis reflects that she had “most of the competencies needed” for the post, her score reflects that she did not have the required competencies because she obtained a “failing score”. Her interview score should be higher than that of the second recommended candidate.

19. The Applicant requests that the recruitment process be canceled and that the post be re-advertised.

**Respondent’s contentions**

20. The Respondent contends:

i) The selection process was properly effected. The Applicant’s candidacy was given full and fair consideration;

ii) The applicable provisions of Personnel Directive A/4/Part II were complied with, including with respect to advertising the post, short-listing and assessing the candidates. The panel’s recommendations were based upon a fair and independent assessment of the interviewed candidates;

iii) The record clearly establishes that the selection criteria were “free from taint of arbitrariness or capriciousness, motivation by prejudice or extraneous factors, procedural irregularity, or error of law”;

iv) The interview panel was cognisant of the Applicant’s experience. It concluded that the Applicant was a suitable candidate and recommended her as a third ranked candidate;

v) The decision to advertise the post internally and externally was consistent with the area staff selection policy of competitive
recruitment of internal and external candidates and of the necessity for securing the highest standards of efficiency, competition and integrity in the appointment of staff;

vi) The panel found that the selected candidate “had extensive experience in human resources”. He was ranked “first in the interview and test score”;

vii) Considering that the post was advertised internally and externally, there is no basis for the contention that the selected candidate was not a staff member;

viii) The Applicant has produced no evidence to suggest that the confidentiality of the recruitment process was compromised;

ix) As the test results were part of the evaluation process, it was within the remit of the panel to access the results of the tests in their assessment of the candidates; and

x) There is no contradiction between the interview score and the interview report analysis as contended by the Applicant. In comparison with the top two candidates, the ranking of the Applicant at 16.53/40 was reasonable. The second priority candidate had more positive reviews by the panel members compared to the Applicant. Furthermore, the Applicant does not suggest that she was a better candidate as opposed to the selected first candidate.

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

Considerations

22. In the present case, the Applicant contests the decision not to select her for the post of Human Resources Associate A (Recruitment), HRD/LFO.
23. Area Staff Regulation 4.3 provides:

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.

24. Area Personnel Directive No. PD/A/4/PartII/Rev.7/SectionI (“Area Staff Selection Policy”) effective 1 July 2009 provides in relevant part:

**SELECTION PRINCIPLES**

1. Area staff selection activities carried out by the Agency will be guided by the following principles:
   - Appointing candidates with highest standards of efficiency, competence, and integrity…

25. In *Ljungdell* 2012-UNAT-265, the United Nations Appeals Tribunal ("UNAT") held that:

30. Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration.

26. In *Rolland*, 2011-UNAT-122, the UNAT held that:

20. The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

21. All candidates before an interview panel have the right to full and fair consideration…

* * *

26. There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to
even minimally show that the Appellant’s candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

27. The Tribunal reviewed the selection process and noted that the vacancy announcement indicated that “[f]or all posts, the weight allocated for the technical/practical tests … is 60 [percent] and for the interview is 40 [percent]”.

28. The recruitment report shows that the Applicant was considered as an internal candidate. She obtained a total of 47.7 percent out of the 60 percent in the test scores. This percentage was calculated based on the 79.5/100 points of her technical test and the “pass” mark of her computer test. She achieved 16.53 percent out of the 40 percent in the interview score. Therefore, she obtained a total of 64.23 percent in the selection process. In comparison with the other candidates, she was ranked third in the selection process and was properly placed on the roster as the number two ranked alternate.

29. In her application, the Applicant challenges the selection of the successful candidate by asserting that he had “very little experience in HR”. The recruitment report shows that the selected candidate obtained a total of 39.60 percent out of the 60 percent in the test scores. This percentage was calculated based on the 66/100 points of his technical test and the “pass” mark of his computer test. He achieved 32.53 percent out of the 40 percent in the interview score. Therefore, he obtained a total of 72.13 percent in the selection process. In relation to his experience, the recruitment report states that during the interview, the selected candidate showed “his extensive experience in HR” and noted that “he [was] creative and ha[d] initiative”. In comparison with the other candidates, he was ranked first in the recruitment process and was thus recommended to be selected for the post. The Tribunal, therefore, finds that the Applicant’s allegations in relation to the selected candidate are unsubstantiated.

30. In her comments in relation to the recruitment report, the Applicant argues that the score given to her in the interview, that is 16.53/40 percent, does not reflect what was written in the analysis of the interview. She points out that while
the interview report analysis reflects that she had “most of the competencies needed” for the post, her score reflects that she did not have the required competencies because she obtained a “failing score”. She should have received a score above 20/40 percent. The Applicant compares her interview score with that of the second recommended candidate and asserts that her score should be higher than the score of the second recommended candidate.

31. The recruitment report shows that while the panel considered that the Applicant had “most of the competencies needed” for the post, it found that the second recommended candidate had “the majority of the competencies required for the job” and that the selected candidate had “the required competencies for the post”. The Tribunal considers that the Applicant’s allegation is not relevant. Even considering that the Applicant is correct and her score should have been higher than the score of the second recommended candidate, it does not follow that her total score would have been higher than that of the selected candidate or that she would have been selected for the position. The Tribunal highlights that it is not its role to assess the relative merits of the candidates for the position but to determine that the proper procedures were followed.

32. In her application, the Applicant claims that while the “usual practice” is to only advertise posts internally, this post was also advertised externally. She argues that an external candidate, who was not a staff member, was selected for the post. Contrary to the Applicant’s allegations, the Tribunal finds that, indeed, the Area Staff Selection Policy allows the Agency to advertise externally and thus select external candidates. In this regard, the Area Staff Selection Policy provides:

**SELECTION POLICY AND RELATED PROCESSES**

23. Agency area selection will be managed through a combination of:

(a) Proactive management of anticipated vacancies identified as part of the annual HR planning exercise;

(b) Competitive recruitment of internal and external candidates;

(c) Selection of pre-approved roster candidates.
33. The Applicant also contends that the results of the technical tests should not have been shared with the panel prior to the interviews as this may have influenced their assessment of the candidates in the interviews. In this regard, the Tribunal notes that the Area Staff Selection Policy provides in paragraph 22 that the interview panel for each vacancy is responsible *inter alia* for:

- Preparing standardised interview questions to be addressed to all candidates in advance of the interview …;
- Conducting competency-based interviews;
- Evaluating candidates based on test results, interview, references and performance appraisals;
- Making recommendations to Hiring Director on suitability of candidates.

34. Similarly, the vacancy announcement provides that “[t]he final recommendation for selection is based on the test results, interview assessment, Agency priorities and needs and the candidates’ profiles ...”. Therefore, as the test results are part of the candidates’ evaluation, there was nothing improper in informing the panel members of the test results prior to the interview of the candidates. The Applicant has failed to provide any evidence to substantiate the alleged bias of the panel members.

35. The Applicant alleges that the response to her email dated 10 November 2014 was written by a person who had no delegation of authority to reply on behalf of the DUA/L. Without discussing whether or not the Grievances Officer had authority to reply on behalf of the DUA/L, the Tribunal notes that even without a reply to her request for decision review, the Applicant still could have filed an application before the Tribunal contesting her non-selection for the post. Therefore, she did not suffer any prejudice by receiving a response to her request. In any event, the Tribunal recalls that its role is to review the legality of a decision at the time that such decision is taken. Any administrative step subsequent to the decision does not affect the legality of the decision in itself.

36. The Applicant asserts that the selected candidate was aware of the interview results two weeks prior to the completion of the recruitment report. Even assuming that the Applicant is correct in her assertion, the Tribunal
considers that this breach of confidentiality, though unfortunate, is without any consequence to the legality of the selection process.

37. In light of the above, the Tribunal finds that the Applicant has failed to prove that the Respondent’s decision not to select her was exercised arbitrarily, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.

**Conclusion**

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

The application is dismissed.

_____(Signed)_____________
Judge Jean-François Cousin
Dated this 14th day of March 2016

Entered in the Register on this 14th day of March 2016

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