AYOUB

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 Maha Ayoub (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 her post and declare her provisionally redundant.

Facts

2. Effective 1 September 2008, the Applicant entered the service of the Agency as a Clerk A on a fixed-term appointment until 31 August 2011, at Grade 7, in the Yarmouk Branch of the Microfinance Department (“MD”) of the Syria Field Office (“SFO”). Effective 1 April 2009, the Applicant was transferred to the Al-Saïda Zeinab Branch of the MD/SFO. On 29 August 2011, the Applicant’s fixed-term appointment was extended to 31 August 2014. In July 2012, the Applicant was transferred to the Al-Ameen Branch of the MD/SFO. On 11 March 2014, the Applicant’s fixed-term appointment was extended until 30 September 2014.

3. In September 2014, the MD/SFO developed a redundancy plan abolishing 17 posts effective 31 December 2014, noting, inter alia:

   At the current level, there is overstaffing in loan officers’ post, which cannot be financed from the current level of outreach due to capital limitations. Reductions will also include administrative staff, while maintaining a skeletal administrative staffing to maintain core administration required to support its operations.

   It is planned to maintain six loan officers (LO) at each branch (except Damascus area, where an additional two LOs will be maintained to work on the collections of the bad portfolio), one branch manager, area loan supervisor, cashier, clerk, data operator, and cleaner. In addition, a skeletal administrative staff at the national offices for management, HR and finances will be maintained. Currently, MD employs 82 staff members (47 fixed term and 35 SSA) allocated in Damascus area, Tartous, Latakia, and Suwaida. The proposed list of needed versus redundant staff, as at 1 January 2015, (attached) indicates that the total number of staff required to maintain the current level of operations is 56 staff (30 fixed and 26 SSA), while the redundant staff will be 27 (17 fixed and 10 SSA).
4. On 15 September 2014, the Agency organized a meeting with the MD/SFO staff members to explain the financial situation of the department, the redundancy process and the evaluation criteria for the different posts. For the previous six months, the Applicant had been performing data entry duties rather than duties of a Clerk. The Agency indicated in this meeting that in order to fairly determine which staff members were the least efficient incumbents, evaluations would be based on a previous evaluation exercise that staff members had undergone (this criterion was given 70 percent of the score) and the actual performance of the staff members in their positions at the current time (this criterion was given 30 percent of the score).

5. By letter dated 30 September 2014, the Head, Field Human Resources Office (H/FHRO) informed the Applicant that her post would be abolished effective 31 December 2014 and that she was declared provisionally redundant effective 1 October 2014. The letter provided in relevant part:

   I have to inform you that based on the evaluation of MD staff members conducted during this month; your post is one of the abolished posts. Consequently you are hereby, declared provisionally redundant effective 1 October 2014. Your provisional redundancy is regulated by the Area Personnel Directive A/9, Sec15.

   In accordance with the above directive we provide you a list of currently available vacant posts. We kindly request that you 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 10 October 2014.

6. On 9 October 2014, the Agency held a meeting with all provisionally redundant MD/SFO staff in order to provide them with information about applications for vacancies, and employment on a daily paid or casual basis. In the following days, the Agency held individual meetings with staff members to discuss and determine their compatibility with vacant posts.

7. By letter dated 30 November 2014, the H/FHRO informed the Applicant that she would be separated from the Agency for the reason of redundancy. The letter provides in relevant part:
I refer to the letter of 30 September 2014 in which you were declared provisionally redundant. The Agency has made efforts to find you an alternative suitable placement but until the date of this letter has been unsuccessful.

In accordance with Area Personnel Directive A/9, paragraph 15.4, you are hereby served with the termination notice required by your letter of appointment, i.e. 30 days. This means that you will be separated from the Agency for reason of redundancy effective close of business on 31 December 2014.

During the following one month period, the Agency will continue making all possible efforts to find a suitable placement for you. You are also encouraged to apply to suitable vacancies during the period and to inform Head Field Human Resource Office accordingly. Should an alternative suitable placement be found and you accept it, this termination notice will be rescinded.

8. On 27 November 2014, the Applicant filed a request for review of the decision dated 30 September 2014, to abolish her post and declare her provisionally redundant.

9. By letter dated 20 December 2014, the Deputy Commissioner-General replied to the Applicant’s request for decision review. The contested decision was upheld.

10. On 14 December 2014, the Applicant was informed that, effective 23 December 2014, she would fill the post of Clerk at the Damascus Training Centre on a daily paid basis while the incumbent was on maternity leave.

11. On 22 February 2015, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The same day, the application was transmitted to the Respondent.

12. On 24 March 2015, the Respondent filed his reply. The reply was transmitted to the Applicant on 25 March 2015.

13. On 17 May 2015, the Applicant filed her observations on the reply. The observations were transmitted to the Respondent on 21 May 2015.

14. By Order No. 075 (UNRWA/DT/2015) dated 8 July 2015, the Tribunal ordered the Respondent to submit an Arabic translation of the reply.
15. On 27 July 2015, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

16. The Applicant contends:

   i) The contested decision was “prejudicial” to her rights as a staff member. She lost her fixed-term appointment and “this contradicts UNRWA regulations”;

   ii) Her evaluation was unfair, particularly when she was evaluated as a Data Entry Officer. There were no clear standards to rate her productivity; her “daily maternity hours” were not taken into consideration, and the evaluation was done by a manager who did not know her work;

   iii) Replacing a staff member on maternity leave was only on a temporary basis; and

   iv) She lost job security and has no guarantee for future employment, “although there are vacancies suitable for [her] qualifications and experience”.

17. The Applicant requests:

   i) To be reappointed as a staff member on a fixed-term contract with the same conditions of her previous contract; and

   ii) To be compensated for the material and “psychological” damages she sustained because of “the loss afflicted during the temporary contract period”.
Respondent’s contentions

18. The Respondent contends:

i) The decision to abolish the Applicant’s post and declare her provisionally redundant was properly effected; in accordance with Area Staff Regulations 9.1 and 9.3 and Article 15 Area Staff Personnel Directive No. A/9 (“PD A/9”); the Agency has broad discretionary authority to eliminate posts and to declare staff members provisionally redundant;

ii) The Syrian crisis, which started in March 2011, has tremendously affected the MD/SFO resulting in a genuine redundancy situation; the MD/SFO is a self-sustaining department that covers its costs with the income generated by its operations;

iii) In accordance with article 15.2 of PD A/9, all staff members in the identified post categories were evaluated in order to determine the least efficient incumbents who should be declared provisionally redundant;

iv) The Applicant was evaluated in her capacities of Clerk and Data Entry Officer. She was evaluated by the two supervisors for whom she had worked. In the category of Clerk, she obtained the second lowest score (this criterion was given 70 percent of the total score), and in the category of Data Entry Officer, she obtained the lowest score (this criterion was given 30 percent of the total score);

v) The Agency made genuine attempts to locate suitable alternative posts for the Applicant during the period of provisional redundancy; on 5 October 2014, H/FHRO sent an email to the Heads of different departments to ask support for the integration of provisionally redundant staff. On 15 September and 9 October 2014, meetings were held with provisionally redundant staff to discuss alternative placements, and during the week of 12 October individual meetings took place, including a meeting with the Applicant. On 14 October the Acting Recruitment Officer sent a list of new vacancies to all SFO area staff, including the MD/SFO Staff; on 2, 3 and 30
November, a list of new vacancy announcements was shared with the provisionally redundant staff;

vi) An “employability course” for provisionally redundant staff took place between 4 and 6 November 2014. The Applicant participated in this course;

vii) On 24 March 2014, 11 of the 17 provisionally redundant staff had found, at least temporarily, alternative employment in SFO;

viii) In November 2014, the Applicant was interviewed for three positions but was not selected for any of them. However, between 23 December 2014 and 22 March 2015, the Applicant replaced a staff member in a “Clerk B” position. The Agency succeeded in securing a daily paid contract for the Applicant; and

ix) The remedies sought by the Applicant have no legal basis.

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

Considerations

20. PD A/9 sets out the Agency’s policies on Separation from Service. Paragraph 15 deals with separation as a result of redundancy and provides in relevant part:

15.1. Redundancy arises when a post is

15.1.1. eliminated; or

15.1.2. reclassified and the incumbent either no longer meets the qualifications specified in the Occupation Classification Manual to encumber the post, or would suffer a reduction of entitlements by remaining in the post; or

15.1.3 reclassified from part-time to full-time […]

15.2. In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. The affected staff member will be the incumbent in the case of a unique post, i.e., one which requires unique
qualifications and which is not replicated elsewhere in the relevant section of the staffing table. 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 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.

21. Contrary to the Applicant’s claim that she “lost” her fixed-term appointment, which “contradicts UNRWA regulations”, it is clear from the above that the Agency, in fact, has a policy dealing with the abolishment of posts for reasons of redundancy.

22. Clearly, the Syrian crisis seriously disrupted the country’s economy, making microfinance work in Syria increasingly difficult. Sufficient evidence has been produced by the Respondent that, as early as June 2012, the MD/SFO was forced to take measures because of a decrease in lending and the devaluation of the Syrian pound.

23. The Commissioner-General has broad discretion with regard to abolishing posts in a redundancy situation. However, mindful of the Commissioner-General’s broad discretionary authority, the Tribunal nevertheless also considers that this discretionary authority is not unfettered and that the Tribunal will not interfere with it unless the contested decision was arbitrary or capricious,
motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.

24. On 15 September 2014, the Agency held a meeting with the MD/SFO staff to discuss the financial problems of the MD/SFO, the plan to downsize and the process of evaluation. The plan called for an abolishment of 27 posts (17 fixed-term appointments and 10 on Special Service Agreements (“SSA”) in the Damascus Area. The 17 fixed-term staff members were to be declared provisionally redundant for a period of three months, and if no other suitable posts were located, they would be separated from service.

25. Staff members in the identified post categories were evaluated in order to determine the least efficient incumbents. The Agency recognized that, at the time of the evaluation, some staff members were performing duties that were different from their original duties. The Tribunal finds that, under these circumstances, evaluating staff members on previous and current performances was reasonable. Furthermore, the redundancy plan of 31 December 2014 indicated that only one Clerk was to be maintained per branch. The Tribunal considers that the documents in the case file show that the Agency’s decision to select the most efficient incumbents was properly effected.

26. The Applicant contends that her evaluation was unfair. However, the methodology had been explained and applied to her and to all of the other Clerks in the Al Ameen Branch. The Applicant claims that her productivity was not rated properly, without submitting any evidence to support this claim. The evaluation records show that for the elements of commitment and responsibility she obtained the lowest scores, while for quickness and accuracy she obtained higher scores. It is clear from email exchanges between the Applicant and her manager that the evaluations had been performed by supervisors as well as managers and that all evaluators had agreed on a lower score for commitment and responsibility without mentioning her productivity. While the Applicant claims that her “daily maternity hours” were not taken into consideration, she does not give enough details in her application to allow the Tribunal to consider this claim. Although there were only minor differences in scores between the Applicant and the other Clerks and, the
outcome was unfortunate for the Applicant, there has been no evidence submitted that the decision to abolish the Applicant’s post was arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.

27. The Tribunal finds that the MD/SFO was dealing with a genuine redundancy situation and that the Applicant has failed to submit evidence that the decision to abolish her post and declare her provisionally redundant was prejudiced or influenced by any extraneous factors.

28. With respect to the Applicant’s request for compensation, the Tribunal has held that the contested decision was lawfully made, therefore no compensation can be awarded.

Conclusion

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

The application is dismissed.

_________(Signed)______________

Judge Jean-François Cousin

Dated this 26th day of September 2016

Entered in the Register on this 26th day of September 2016

_________ (Signed)__________________

Laurie McNabb, Registrar, UNRWA DT, Amman