Before: Judge Jean-François Cousin

Registry: Amman

Registrar: Laurie McNabb

JALBOUT

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 Arwa Jalbout (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 terminate her appointment on the basis of redundancy.

Facts

2. Effective 1 April 2009, the Applicant entered the service of the Agency as a Credit Extension Assistant, also known as Loan Officer, on a fixed-term appointment for three years, at Grade 9, in the Yarmouk Branch of the Microfinance Department (“MD”) in the Syria Field Office (“SFO”). On 14 March 2012, the Applicant’s appointment was extended up to 31 March 2015.

3. In November 2013, the MD/SFO developed a projection of its operations and staff needs together with UNRWA Headquarters Amman. This projection indicated, inter alia, that 14 Loan Officer posts in the Damascus Area needed to be abolished as of 1 April 2014. Accordingly, during the first two weeks of December 2013, 37 Loan Officers were evaluated in order to identify the incumbents who would be declared redundant. The evaluation was based on the following factors: goals, competences and length of service. A point system was developed assigning points and weights to these factors. The Applicant obtained a score that placed her 24th on the list of 37 Loan Officers who had been evaluated.

4. By letter dated 22 December 2013, the Head, Field Human Resources Office (“H/FHRO”) informed the Applicant that 18 posts (14 of which were Loan Officers), including her post, 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 [sic] 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, Latakia 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.

5. Effective 1 January 2014, the Agency was able to retain the Applicant’s services as a Data Entry Clerk and she continued serving the MD/SFO in 2014.

6. In September 2014, MD/SFO developed a redundancy plan, which noted, *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).
7. 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. Concerning the Applicant, it was noted that as she “[had been] assigned only clerk functions during the past six months, her performance will be evaluated through competencies only”.

8. By letter dated 30 September 2014, the H/FHRO informed the Applicant that 17 posts, including her Loan Officer’s post, would be abolished effective 31 December 2014 due to the continued financial difficulties of the MD/SFO. The letter provides 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. In case you are not interested in any of the offered vacancies please confirm by the same deadline.

9. 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.

10. By letter dated 30 November 2014, the H/FHRO informed the Applicant that she would be separated from the Agency effective 31 December 2014 for the reason of redundancy. The letter provides in relevant part that:

   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 [H/FHRO] accordingly. Should an alternative suitable placement be found and you accept it, this termination notice will be rescinded.

11. Thereafter, the Applicant submitted two separate forms entitled “Request for Decision Review”. In one form (dated 25 November 2014) the Applicant identifies the decision as “[f]inding a fixed-term position with the same contractual terms with UNRWA and the same income”. The second form (dated 25 December 2014) identifies the decision as “[s]ending Contract Termination Letter due to lack of a vacancy of the same contract and the same income, and finding a temporary post, which I have worked in for 18 days, then the incumbent of that post returned to his place [sic]”.

12. By letter dated 20 December 2014, the then Deputy Commissioner-General replied to the Applicant’s request for decision review, stating that the request had been received in her office on 30 November 2014. She characterizes the contested decision as “the decision to abolish the post of Loan Officer” in the MD/SFO. The letter provides in relevant part:

1. I refer to your request for decision review received by my office on 30 November 2014, wherein you requested a review of the decision to abolish the post of Loan Officer in the Microfinance Programme in Syria, a post that you have held since 4 January 2009.

   * * *

4. […] I note that: (i) the letter addressed to you from the [H/FHRO] dated 30 September 2014 informed you that the reason for the abolishment of your post is due to “financial difficulties that necessitate implementing certain administrative measures”; (ii) the decision to abolish the post of Loan Officer was taken following extensive consultation between the Syria Field Office, the Microfinance Programme Director and the Executive Office
and was based on the current financial situation of the Programme which has incurred very substantial losses in Syria due to the ongoing conflict; and (iv) [sic] as indicated in the letter of termination that you received dated 30 November 2014, Syria Field Office has sought and continues to seek opportunities for you to apply for UNRWA posts for which you meet the qualifications.

5. In light of these facts, I conclude that the decision of the [H/FHRO] to abolish the post of Loan Officer was made in the interest of the Agency and did not constitute a violation of the Agency’s Rules and Regulations. […]

13. Effective 5 January 2015, the Applicant worked with the Emergency Programme on a daily paid contract until 31 March 2015.

14. On 10 February 2015, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). In her application, the Applicant identifies the contested decision as “[t]erminating [her] contract due to the lack of finance”.

15. The application was transmitted to the Respondent on 11 February 2015.

16. On 13 March 2015, the Respondent filed a request for an extension of time to file a reply. The request was transmitted to the Applicant on 15 March 2015.

17. By Order No. 034 (UNRWA/DT/2015) dated 26 March 2015, the Tribunal granted the Respondent’s request for an extension of time to file his reply.

18. On 2 April 2015, the Respondent filed his reply to the application. The reply was transmitted to the Applicant on 5 April 2015.


20. On 15 July 2015, the Respondent submitted the requested Arabic translation of the reply. The translation was transmitted to the Applicant on the same day.

21. By Order No. 038 (UNRWA/DT/2016) dated 4 May 2016, the Tribunal ordered the Respondent to clarify the discrepancies in the Respondent’s submissions regarding the contested decision in this case and to file a response
taking into account that the contested decision is the decision dated 30 November 2014.

22. On 26 May 2016, the Respondent submitted the requested clarification. The submission was transmitted to the Applicant on 2 June 2016.

**Applicant’s contentions**

23. The Applicant contends:

   i) The “Head” was not informed in a reasonable time of the decision to terminate the posts;

   ii) The “Department” hired temporary employees in the same posts that she and others had been occupying;

   iii) The Agency did not exert the required efforts to find her another suitable post;

   iv) The Applicant’s qualifications were not taken into account in finding her an alternative post;

   v) Her contract was terminated despite her good performance evaluations;

   vi) In December 2014, she was temporarily assigned to another post. However, when the incumbent of that post returned, she was left without a post and she was not able to get any other post because it was the end of the year. Therefore, she lost the opportunity to search for another post;

   vii) The crisis in Syria and the lack of work opportunities elsewhere have not been taken into account;

   viii) The Agency did not take into account the fact that she had worked for UNRWA for six years as a fixed-term employee;

   ix) The Agency did not find her an alternative post even though she badly needs to work because she is the only breadwinner of her family; and
x) She and her family are facing very difficult living conditions.

24. The Applicant requests:

i) “To find her a post at the same grade and with the same contractual conditions as her former post”; and

ii) Compensation for the salaries she was deprived of because her contract was terminated before its expiry.

**Respondent’s contentions**

25. The Respondent contends:

i) The decision to abolish the Applicant’s post and to 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, tremendously affected the MD/SFO and caused a genuine redundancy situation; as MD/SFO is a self-sustaining department that covers its costs with the income generated by its operations;

iii) According to the redundancy plan, developed in September 2014, the Agency decided to abolish 27 positions (17 fixed-term posts and 10 SSA contracts). The redundancy plan defined the guidelines for identifying redundant staff and stressed the need for transparency, and fair criteria in the evaluation process and for finding suitable alternative employment for redundant staff members;

iv) All of the staff members in the identified post categories were evaluated in order to determine which incumbents should be declared redundant. In the category of Loan Officer, the Applicant obtained the 24th score;
v) The Agency made genuine attempts to locate a suitable alternative post for the Applicant and succeeded in securing a daily paid contract for her. She worked with the Emergency Programme on the basis of a daily paid contract between 1 January and 31 March 2015;

vi) During the period of provisional redundancy, several initiatives were taken in order to find suitable alternative placement for the staff members who had been declared provisionally redundant. On 5 October 2014, H/FHRO sent an email to the Heads of the Departments in the SFO 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 the MD/SFO area staff members, including MD staff; on 2, 3 and 30 November, a list of new vacancy announcements was shared with the provisionally redundant staff;

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

viii) The Agency based its decision to declare the Applicant redundant on a proper assessment of the staff needs of the MD/SFO and a thorough evaluation of the Applicant’s performance, which concluded that she was among the least efficient incumbents of the abolished posts;

ix) The decision was not arbitrary, capricious or motivated by extraneous factors; and

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

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

27. It is clear to the Tribunal that, by her application, the Applicant contests the decision to terminate her appointment. While the two requests for decision review may not have been clear about the contested decision, and the letter to the Applicant from the then Deputy Commissioner-General dated 20 December 2014 characterized the contested decision as “the decision to abolish the post of Loan Officer” in the MD/SFO, the Tribunal determines in the interests of justice that the contested decision is the decision to terminate the Applicant’s contract.

28. 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.

29. 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 […]

30. 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.

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.

31. While the Applicant claims that the “Head” was not informed in a reasonable time of the decision to terminate the posts in accordance with the Regulations and Rules, it is clear to the Tribunal, based on the above-referenced policy, that the Agency managed the situation in accordance with the established policy dealing with the abolishment of posts for reasons of redundancy.

32. 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.
33. The Commissioner-General has broad discretion with regard to abolishing posts in a redundancy situation. However, mindful of the Commissioner-General’s broad discretion authority, the Tribunal nevertheless also considers that this discretion 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.

34. The Applicant was evaluated as part of a process of determining the least efficient incumbents, who should be declared redundant. After the final evaluation of September 2014, the Agency determined that the Applicant had to be declared provisionally redundant.

35. PD A/9 paragraph 15.5 clearly states that “reasonable effort must be made to find the redundant staff member a suitable placement”. The Applicant claims that no such effort was made. However, the evidence shows that the Agency held a number of meetings in September and October 2014 with all staff who had been declared provisionally redundant, including the Applicant, to discuss alternative placements.

36. Furthermore, between October and November 2014, on at least four occasions, the Agency shared the lists of new vacancies with the provisionally redundant staff, including the Applicant. Moreover, an individual meeting with the Applicant was held between 12 and 16 October 2014. In addition, in November 2014, the Applicant participated in a course covering resume writing and interview skills that was offered by the Agency for the provisionally redundant staff. While the Applicant claims that her qualifications were not taken into consideration for other posts, she has not provided any evidence to allow the Tribunal to consider this claim.

37. It is unfortunate for the Applicant that the opportunity for “on-the-job-training” as a Clerk B fell through in December 2014 because of the return of the incumbent of this post. However, effective 5 January 2015, the Agency did arrange for the Applicant to work for the Emergency Programme on a daily paid
basis until March 2015. The Tribunal fails to see how this affected the Applicant’s opportunity to search for another post as she claims.

38. 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.

39. 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

40. 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