AL IBRAHIM

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 Khaled Al Ibrahim (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 his post and declare him provisionally redundant.

Facts

2. Effective 1 February 2007, 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”).

3. Following a number of renewals, the Applicant’s fixed-term appointment was extended until 31 December 2014. Due to the violence affecting Syria, in November 2010, the Applicant was transferred to the Douma Branch and in September 2012, he was transferred to the Al-Saida Zeinab Branch. One month later the Applicant was transferred to the Al-Ameen Branch.

4. 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).

5. 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.

6. By letter dated 30 September 2014, the Head, Field Human Resources Office (H/FHRO) informed the Applicant that his post would be abolished effective 31 December 2014 and that he 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.

7. 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.

8. On 25 November 2014, the Applicant filed a request for review of the decision “terminating [his] services at UNRWA”.

9. By letter dated 30 November 2014, the H/FHRO informed the Applicant that he 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.

10. On 15 December 2014, the Applicant started “on-the-job-training” as Area Sanitation Officer on a daily paid contract.

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

12. On 18 March 2015, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The same day, the application was transmitted to the Respondent.

13. On 17 April 2015, the Respondent filed a request for an extension of time to file a reply. The request was transmitted to the Applicant on 19 April 2015.

14. By Order No. 054 (UNRWA/DT/2015) dated 14 May 2015, the Tribunal granted the Respondent’s request for an extension of time to file his reply.

15. On 1 June 2015, the Respondent filed his reply to the application. The reply was transmitted to the Applicant on 2 June 2015.

16. By Order No. 083 (UNRWA/DT/2015) dated 27 July 2015, the Tribunal ordered the Respondent to submit an Arabic translation of the reply.
17. On 7 August 2015, the Respondent submitted the requested Arabic translation of the reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

18. The Applicant contends:

   i) The contested decision is prejudicial to his rights as an UNRWA staff member. Such decision is unjust;

   ii) His qualifications and experience “allow it to find an alternative post with the same type of contract”; and

   iii) He had to accept a daily paid contract at a lower grade or otherwise remain jobless.

19. The Applicant requests:

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

   (ii) Compensation for the psychological and material damage because of the loss of the benefits and entitlements of a fixed-term contract.

**Respondent’s contentions**

20. The Respondent contends:

   (i) The decision to abolish the Applicant’s post and declare him 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 and caused a genuine redundancy situation; the
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, fair criteria and finding suitable alternative employment for redundant staff members;

(iv) In the category of Loan Officers, the Applicant obtained the fifth lowest score;

(v) The Agency made genuine attempts to locate a suitable alternative post for the Applicant during the period of provisional redundancy. On 5, 12, and 13 November 2014, the Applicant was interviewed but not selected for any position;

(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, the 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 members, including the MD/SFO 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) Since 1 January 2015, the Applicant is working as Area Sanitation Officer on the basis of a daily paid contract;
(ix) On 24 March 2014 11 of the 17 provisionally redundant staff members had found at least temporarily alternative employment in SFO;

(x) 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 he was among the least efficient incumbents of the abolished posts;

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

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

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

Considerations

22. 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.

23. 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.

24. 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.

25. 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.

26. 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. The Tribunal considers that the case file shows that the Agency’s decision to select the most efficient incumbent was properly effected.

27. 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.

28. Furthermore, between October and November 2014, the Agency, on at least four occasions, 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. The Applicant also participated in a course covering resume writing and interview skills for redundant staff which had been organized by the Agency in November 2014.

29. The Tribunal finds that MD/SFO was dealing with a genuine redundancy situation. Furthermore, sincere attempts were made to locate a suitable alternative post for the Applicant. In fact, the Agency was able to identify a position as Area Sanitation Officer on a daily paid contract. The Applicant failed to submit evidence that the contested decision was arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.
30. 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

31. 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