UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/LFO/2015/064
Judgment No.: UNRWA/DT/2016/039
Date: 21 December 2016
Original: English

Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

AL RACHID

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by May Omar Al Rachid (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 renew her appointment as Secretary A, at the Northern Management Unit in Nahr el-Bared Camp, in the Lebanon Field Office.

Facts

2. Effective 10 June 2008, the Applicant entered the service of the Agency as a Secretary at the Nahr el-Bared Project Management Unit (“PMU”) on a daily-paid contract. Effective 1 September 2008, she was appointed as a Secretary at the Northern Management Unit (“NMU”) on a limited duration contract. The NMU integrated the North Lebanon Office and the PMU. Effective 1 September 2012, the Applicant was appointed on a fixed-term appointment as Secretary A, Grade 10, at the NMU. At the time material to the events set forth in the application, the Applicant occupied this post until 15 September 2015.

3. On 16 December 2014, the Steering Committee (the “Committee”) of the Nahr el-Bared Camp (“NBC”) convened to discuss the status of the NBC reconstruction project. Among other things, the lack of funding of the NBC project was discussed, as well as a plan to implement a reduction of staff, which would render 60 staff members redundant as of 31 January 2015.

4. On 2 March 2015, the “Implementation of the NBC Staffing Plan” was issued by the Acting Director of UNRWA Affairs, Lebanon (“A/DUA/L”). The plan provided that it was necessary to commence reducing staff levels in the NMU on a phased basis. It was proposed to retain the most suitable staff members on the basis of holding a competitive interview process. With respect to the two Secretary A positions at the NMU, it was decided to maintain only one.

5. On 4 March 2015, A/DUA/L requested the Executive Office of UNRWA to approve the reduction of staff at the NBC by 67 staff members out of the total 193. On 23 March 2015, the Commissioner-General approved the request.
6. On 14 May 2015, the OiC Deputy Director of Programmes UNRWA, Lebanon, sent a letter to the Applicant informing her that she was declared provisionally redundant effective 15 May 2015. On the same day, the Applicant was provided with a list of vacant posts and invited to express her interest in three of them, in an order of priority, by the close of business on 22 May 2015. The other Secretary A at the NMU also received these communications.

7. By email of 1 June 2015, the Applicant and the other Secretary A were invited to participate in a technical evaluation consisting of an exam and an interview to determine the most suitable for the remaining Secretary A post.

8. Both Secretaries A participated in the technical evaluation. The Applicant scored 165 points on the exam, and the other Secretary A scored 167 points. In the interview the Applicant scored 82.5 points, and the other Secretary A scored 83.5 points.

9. Based on these results, the interview panel recommended the other Secretary A as the number one candidate, and the Applicant as the number two candidate.

10. On 15 June 2015, the Human Resources Career Management Officer informed the Applicant that her contract would not be renewed.


13. By letter of 14 August 2015, the Head, Field Human Resources Office in Lebanon, informed the Applicant that her contract would not be extended due to lack of funds and she was given a one-month notice of the termination of her contract as of 15 September 2015.

14. On 3 September 2015, the Applicant filed her application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 6 September 2015.
15. Effective 15 September 2015, the Applicant was separated from the Agency.

16. On 30 September 2015, the Respondent filed a motion for an extension of time to file a reply. The motion was transmitted to the Applicant on 4 October 2015.

17. By Order No. 114 (UNRWA/DT/2015) dated 19 October 2015, the Respondent’s motion for an extension of time was granted.

18. On 30 October 2015, the Respondent submitted his reply. The reply was transmitted to the Applicant on 1 November 2015.

Applicant’s contentions

19. The Applicant contends:

   i) She has been serving the Agency for a longer period than the selected Secretary A;

   ii) She did not receive any information about the test. Everything was arranged, the Project Manager wanted to retain the other Secretary A because they had worked together from the beginning, and the Manager needed a man to defend him;

   iii) There was a lack of transparency in the process specifically created by two managers; and

   iv) There was no need for a test, as the directive is clear: “The determining factor is efficiency which the performance evaluation shows, and longevity of services which is clear to all”.

20. The Applicant requests the reversal of the decision not to renew her appointment, and reinstatement in her post of Secretary A.

Respondent’s contentions

21. The Respondent contends:
i) The Agency has broad discretionary power to restructure the Agency and declare staff members provisionally redundant; the decision to abolish one of the two Secretary A positions at the NMU was a proper exercise of the Agency’s discretionary authority;

ii) The Commissioner-General approved the implementation of the NBC Staffing Plan due to lack of funding. The entire NMU was affected;

iii) The Agency made genuine attempts to locate suitable alternative posts for the Applicant;

iv) Performance evaluation reports for the year 2014 were made for each of the incumbents in the Secretary A posts. The Applicant was evaluated as “Fully Meets Expectations” on all six competencies\(^1\) for the post of Secretary A. The other Secretary A was evaluated to “Fully Meets Expectations” for three competencies and “Best Performer” for three other competencies. As such, the other Secretary A received a better performance evaluation than the Applicant;

v) For the exam and the interview, the Applicant scored less than the other Secretary A; and

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

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

**Considerations**

23. The Applicant contests the decision not to renew her appointment as Secretary A at the NMU. The Applicant claims that there was no need for a test, as the determining factors of efficiency and longevity of service are clearly in her favour.

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\(^1\) The Tribunal notes that the case file shows that the Applicant was evaluated as “Best Performer” for one competency, and as “Fully Meets Expectations” for five competencies.
24. The Commissioner-General has broad discretion with regard to abolishing posts in a redundancy situation. The Tribunal will not interfere with this discretionary authority 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. Area Staff Personnel Directive No. A/9/Rev.9 which applies to the abolishment of posts in the current case, provides in paragraph 34:

   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.

26. The NBC Staffing Plan provided that the most efficient staff members would be selected by a competitive process. Following a technical evaluation, consisting of a test and an interview, the Applicant scored less than the other Secretary A, and was consequently not recommended for the position by the interview panel. Furthermore, when the Tribunal examined the 2014 performance evaluations of both Secretaries, the Tribunal found that the other Secretary A received a higher evaluation than the Applicant. The Tribunal finds that there is no irregularity in the described procedure of determining the least efficient incumbent.

27. The Applicant alleges that the selection was biased as the Project Manager of the NMU wanted to retain the other candidate because they had worked together, and he needed a man to defend him. However, the Applicant has not submitted any evidence in support of bias on the part of the Project Manager.
Conclusion

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

The application is dismissed.

(Signed)
Judge Jean-François Cousin
Dated this 21st day of December 2016

Entered in the Register on this 21st day of December 2016

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