AL LABABIDI

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 Ahmad Riad Al Lababidi (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 him for the post of Education Specialist, Mathematics, in the Education Department of the Lebanon Field Office.

Facts

2. Effective 15 January 2001, the Applicant was employed by the Agency on a fixed-term appointment as a Mathematics Teacher, Grade 9, at Bissan Secondary School, Ein El-Hilweh Camp, Saida Area in Lebanon.

3. Following several extensions of his contract, effective 1 January 2014, the Applicant was promoted to Grade 11, Step 6.

4. On 4 March 2015, the Agency published, for internal and external candidates, a vacancy announcement for the post of “Education Specialist (Math)” (“ESM”), Grade 13, in the Lebanon Field Office (“LFO”). The Applicant applied for the post.

5. The Agency received 178 applications for the post of ESM. Thirty seven candidates, including the Applicant, were invited for a technical test held on 12 June 2015. Only 24 candidates attended the test. The candidates who passed the technical test were invited for a computer test held on 9 July 2015. The 10 candidates who were successful in both tests were invited for a personal interview. The Applicant was one of them.

6. On 12 August 2015, the Applicant was interviewed by an interview panel (the “Panel”) comprised of three staff members. The Chairperson of the Panel was the Chief, Area Officer, Central Lebanon Area. The other two panel members were the Professional Development Curriculum Coordinator and the Field Information and Communication Technology Officer.

7. The Panel recommended the appointment of one of the other candidates to the post of ESM. The Director of UNRWA Affairs, Lebanon (“DUA/L”) approved the Panel’s recommendation, and the recommended candidate was appointed to the post on 24 August 2015.
8. By letter dated 3 September 2015, the Applicant was informed that he was not selected for the post.

9. On 2 November 2015, the Applicant sent a request for decision review to the DUA/L. By letter dated 7 December 2015 to the Applicant, the decision was affirmed.

10. On 19 January 2016, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”). On 27 January 2016, the application was transmitted to the Respondent.

11. On 10 March 2016, the Respondent filed a “Motion for Extension of Time” to file his reply. On 13 March 2016, the motion was transmitted to the Applicant.

12. By Order No. 018 (UNRWA/DT/2016) dated 13 March 2016, the Tribunal granted the Respondent’s motion and ordered the Respondent to file his reply on or before 3 April 2016.

13. On 5 April 2016, the Respondent filed a second “Motion for Extension of Time” to file his reply. The motion was transmitted to the Applicant on 6 April 2016.

14. By Order No. 029 (UNRWA/DT/2016) dated 6 April 2016, the Respondent’s second motion was granted.

15. On 22 April 2016, the Respondent filed his reply, which was transmitted to the Applicant on 25 April 2016.

16. On 29 April 2016, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on 2 May 2016.

**Applicant’s contentions**

17. The Applicant contends:

   i) His good performance during the interview was not relied upon;

   ii) The outcome of the Panel’s evaluation of him was linked to his temporary managerial experience in recent years; his other experience and performance were disregarded; and
iii) One of the panel members did not recommend him because of a personal issue, which the Applicant had submitted to the Deputy DUA/L.

18. The Applicant requests:
   i) The outcome of the interview to be reconsidered; and
   ii) To re-conduct the interview with a neutral interview panel.

**Respondent contentions**

19. The Respondent contends:
   i) The selection process was properly effected. In selection matters, the Commissioner-General has broad discretionary authority, and it is not for the Tribunal to assess the relative merits of the candidates;

   ii) The Applicant’s candidacy was given a full and fair consideration. The Panel concluded that the Applicant did not possess the required competencies for the post. The record clearly establishes that the selection criteria and the decision not to select the Applicant were free from taint of arbitrariness, motivation by prejudice or extraneous factors, procedural irregularity, or error of law;

   iii) The Applicant had a score of 14.33 per cent in the interview, and an overall score of 46.43 per cent. The Applicant had the lowest score of all the interviewed candidates;

   iv) The Panel was cognizant of the Applicant’s experience and had evaluated his candidacy against the requirements of the vacancy announcement;

   v) The Applicant did not provide any details about the nature of the referenced “personal issue which [he] had submitted to the Deputy DUA/L”; and

   vi) The relief sought by the Applicant has no legal basis.

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

21. The Applicant contests the decision not to select him for the post of ESM in the Education Department of the LFO. The Tribunal will first set forth the regulatory framework applicable to the contested decision, and then clarify the parameters of the Tribunal’s review.

22. 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.

23. Area Personnel Directive No. PD/A/4/Part II/Rev.7/Section I (“Area Staff Selection Policy”), effective 1 July 2009, provides in relevant part:

1. Area staff selection activities carried out by the Agency will be guided by the following principles:

   • Appointing candidates with the highest standards of efficiency, competence and integrity.

24. In Ljungdell 2012-UNAT-265, paragraph 30, the United Nations Appeals Tribunal (“UNAT”) held that:

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.

25. In Abbasi 2011-UNAT-112, paragraph 26, the UNAT further held that:

The UNDT has jurisdiction to rescind administrative decisions concerning the selection of staff on certain grounds. A decision not to select a staff member may be rescinded in circumstances where he or she did not receive fair and adequate consideration, there has been any kind of discrimination or bias against the staff member, or the proper staff selection procedures were not been followed.

26. Affirming its position and explaining the standard burden of proof in non-selection cases, the UNAT held in Rolland 2011-UNAT-122, paragraph 26, that:
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 Applicant claims that his experience and performance as a teacher were disregarded by the Panel. However, the selection for the post of ESM was a competitive selection process, which consequently included other candidates competing for the same post. Selection for the position was not only based on the candidate’s performance of the past years.

28. The decision not to select the Applicant was taken in accordance with the recommendation of the Panel. The Panel was cognizant of the Applicant’s experience and evaluated the Applicant’s candidacy by taking into consideration the requirements of the vacancy announcement. Thirty seven candidates, including the Applicant, were invited for a technical test. Those candidates who had passed the technical test were invited for a computer test. The ten candidates who passed both tests were invited for a personal interview. The Applicant was one of these 10 candidates. For his performance in the interview, the Applicant received the lowest score of all competing candidates, 14.33 per cent. For the two tests, the Applicant had a combined score of 32.10 per cent, rendering his total score 46.43 per cent out of 100 per cent. This was the lowest overall score of all the interviewed candidates. Consequently, the Applicant was not recommended by the Panel.

29. The Applicant alleges that he was discriminated against because of a “personal issue which [he] had submitted to the DUA/L”. However, the Applicant has remained vague about this issue and did not submit any details or evidence in support of this allegation.

30. In light of the above, the Tribunal finds that the Applicant has failed to establish by clear and convincing evidence: 1) any irregularity in the selection process, namely that the applicable Regulations, Rules and other administrative issuances were not applied in a fair, transparent and non-discriminatory manner; 2) that he did not receive fair and adequate consideration; or (3) that there was discrimination or bias against him.
Conclusion

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

   The application is dismissed.

   (Signed) _______
   Judge Jean-François Cousin
   Dated this 19th day of March 2017

Entered in the Register on this 19th day of March 2017

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