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

GHANEM
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 Sameer Abdulrahman Ghanem (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 promote him to the post of Guard, Grade 3.

Facts

2. Effective 1 April 1991, the Applicant was appointed on a temporary indefinite appointment as a Cleaner, Grade 1, Step 1. Effective 1 February 1992, the Applicant was transferred to the post of Messenger and promoted to Grade 2, Step 2.

3. Effective 1 December 1994, the Applicant was transferred to the post of Guard A, with no change in grade, step or salary. Effective 28 August 1997, the Applicant was transferred to the post of Distribution Supervisor with no change in grade. Effective 14 June 1998, the Applicant was transferred to the post of Packer with no change in grade.

4. By interoffice memorandum dated 16 December 2015, the Director of Human Resources (“DHR”) recommended to the Commissioner-General to grant six staff members from the Jordan Field Office (“JFO”) “temporary personal grades at the Grade 3 level on promotion basis”, effective 1 September 2011. Furthermore, the payment of a lump sum of USD6,240 amounting to the difference between Grade 2 and Grade 3, for the period from 1 September 2011 to 31 December 2015, was recommended. The Commissioner-General exceptionally approved the DHR’s recommendation on 21 December 2015.

5. By letter dated 19 January 2016, the Applicant requested to be promoted to Grade 3, equal to the other guards who were promoted to Grade 3.

6. By letter dated 3 February 2016, the Head, Field Human Resources Office, Jordan (“H/FHRO”) informed the Applicant that the considerations for his colleagues’ promotion to Grade 3 were not applicable to his case.
7. By decision review request form, received by the Office of the Director of UNRWA Operations, Jordan (“DUO/J”) on 18 February 2016, the Applicant requested review of the decision not to promote him to the post of Guard, Grade 3.

8. By letter dated 15 March 2016, the DUO/J affirmed the decision.

9. On 7 June 2016, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 8 June 2016.

10. On 8 July 2016, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30 calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on 10 July 2016.

11. By Order No. 050 (UNRWA/DT/2016) dated 24 July 2016, the Tribunal granted the Respondent’s request for extension of time.

12. On 12 August 2016, the Respondent filed his reply. The reply was transmitted to the Applicant on 14 August 2016.

13. On 1 September 2016, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

14. The Applicant contends:

   i) He worked as a guard from 1 December 1994 to 27 August 1997; and

   ii) His colleagues were promoted, but he was not.

15. The Applicant requests to be promoted to Grade 3, and to be compensated for the loss of salary.
Respondent’s contentions

16. The Respondent contends:

   i) As underlined by the United Nations Appeals Tribunal (the “UNAT”), the Agency “has broad discretion in making decisions regarding appointments and promotions”;

   ii) The Applicant did not meet the criteria to be promoted to Grade 3; and

   iii) The Commissioner-General decided to promote only the JFO staff members who were transferred from their Guard B and A posts, Grades 1 and 2, to other posts on 14 August 2011, as they were deprived of a reclassification and promotion opportunity. With regard to the Applicant, he was not in the same position as the promoted guards and he was not deprived of a promotion opportunity. He only worked as a Guard A from 1 December 1994 to 28 August 1997, and he was not transferred from the post of Guard to another post on 14 August 2011.

17. The Respondent requests that the Tribunal dismiss the application in its entirety.

Considerations

18. The Applicant contests the decision not to promote him to the post of Guard, Grade 3. The only contention raised by the Applicant is that the Agency should have treated him in the same manner as six other JFO staff members who were promoted to Grade 3, as the Applicant claims that all staff members in the same position must be treated equally.

19. In this respect, the Tribunal has to review whether the Applicant was in the same position as the staff members who were promoted to Grade 3. On 21 December 2015, the Commissioner-General exceptionally granted six JFO staff members “temporary personal grades at the Grade 3 level on promotion basis”, effective 1 September 2011, as well as the payment of a lump sum of USD6,240
amounting to the difference between Grade 2 and Grade 3, for the period from 1 September 2011 to 31 December 2015.

20. By interoffice memorandum dated 16 December 2015, the DHR explained to the Commissioner-General the reason for this exceptional remedial measure: on 14 August 2011, seven guards at Grade 1 and 2 had been transferred to other posts at the same grade in the same department, while on the same day, the posts they had encumbered until that time, had been reclassified to the higher Grade 3, effective 1 September 2011.

21. The Tribunal notes that the Applicant worked as a guard from 1 December 1994 until 28 August 1997, before being transferred to the post of Distribution Supervisor. When the promoted guards were deprived of a reclassification and promotion opportunity on 14 August 2011, the Applicant was working as a packer and not as a guard. Therefore, there is a lapse of 14 years between the Applicant’s transfer from the post of Guard to the post of Distribution Supervisor and the reclassification of Guards’ posts that occurred on 1 September 2011. As the Applicant only worked as a guard from 1 December 1994 to 28 August 1997, and as he was not transferred from the post of Guard to another post on 14 August 2011, it is obvious that he was not deprived of an imminent promotion opportunity, which was the reason for the exceptional remedial measure.

22. In light of the above, the Applicant cannot claim that he was entitled to be promoted to Grade 3, as the six other JFO staff members had been.
Conclusion

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

The application is dismissed.

(Signed)
Judge Jean-François Cousin
Dated this 11th day of April 2017

Entered in the Register on this 11th day of April 2017

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