KURDI

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 Mohammad Suleiman Ahmad Kurdi (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 20 June 1994, the Applicant was appointed on a temporary indefinite appointment as a Sanitation Labourer, Grade 1, Step 1.

3. Effective 15 June 2006, the Applicant was transferred to the post of Guard “A”, Grade 1, at Procurement and Logistic Department (“PLD”). Effective 1 January 2007, the Applicant was transferred to the post of Labourer within the PLD, with no change in grade.

4. Effective 11 June 2012, the Applicant was transferred to the post of Tally Clerk within the PLD. As part of an Agency-wide action, the Applicant was promoted from Grade 1 to Grade 2, effective 1 March 2013.

5. Effective 25 November 2015, the Applicant was temporarily appointed on an acting basis as a Guard, Grade 3, until 31 January 2016. Afterwards, the Applicant resumed his regular duties as Tally Clerk.

6. 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.
7. By letter dated 10 January 2016, the Applicant requested to be promoted to Grade 3, equal to the other guards who were promoted to Grade 3.

8. 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.

9. By decision review request form, received by the Office of the Director of UNRWA Operations, Jordan ("DUO/J") on 15 February 2016, the Applicant requested review of the decision not to promote him to the post of Guard, Grade 3.

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

11. On 28 April 2016, the present application was filed with the UNRWA Dispute Tribunal (the "Tribunal"). The application was transmitted to the Respondent on 16 June 2016.

12. On 16 July 2016, the Respondent filed his reply. The reply was transmitted to the Applicant on 17 July 2016.

13. On 12 August 2016, the Respondent filed a motion requesting an extension of time to submit the Arabic translation of the reply ("motion"). On 14 August 2016, the motion was transmitted to the Applicant.

14. By Order No. 059 (UNRWA/DT/2016) dated 23 August 2016, the Tribunal granted the Respondent’s request.

15. On 24 August 2016, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contention**

16. The Applicant contends that he was not treated equal to the other guards who were promoted to Grade 3.

17. The Applicant requests:
i) to be reinstated to his former post;

ii) to be compensated for the loss of salary; and

iii) to be compensated for the psychological damage he suffered.

Respondent’s contentions

18. 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 15 June 2006 to 1 January 2007, and he was not transferred from the post of Guard to another post on 14 August 2011.

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

Considerations

20. 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.
21. 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.

22. 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.

23. The Tribunal notes that the Applicant worked as a guard from 15 June 2006 until 1 January 2007, before being transferred to the post of Labourer. When the promoted guards were deprived of a reclassification and promotion opportunity on 14 August 2011, the Applicant was working as a labourer and not as a guard. Therefore, there is a lapse of 4 years and half between the Applicant’s transfer from the post of Guard to the post of Labourer and the reclassification of Guards’ posts that occurred on 1 September 2011. As the Applicant only worked as a guard from 15 June 2006 until 1 January 2007, 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.

24. 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

25. 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