KAWAMLEH

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 Kawamleh (the “Applicant”) against the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), 1) to manually include other candidates and overrule the computer’s automatic short-list for the post of Deputy Head of Field Logistics Officer; 2) to conduct the first written test without participation of the hiring department; 3) to subsequently cancel the first written test; and 4) to conduct a second written test for the same post.

Facts

2. Effective 1 November 2006, the Applicant was employed by the Agency as a Project Manager Shelter at the Engineering and Construction Services Department (“ECSD”), Field Office Jerusalem, on a fixed-term appointment, Grade 14, Step 1.

3. On 27 November 2015, the Agency published, internally and externally, a vacancy announcement for the post of Deputy Head of Field Logistics Officer (“D/HFLO”), Field Office Jerusalem, Procurement and Logistics Department, Grade 17. The Agency received a total of 51 applications, including the application of the Applicant.

4. Effective 1 January 2016, the Applicant was appointed as a Construction Engineer at the ECSD, on a fixed-term appointment expiring on 31 March 2016, Grade 14, Step 9.

5. By email dated 27 January 2016, the Human Resources Assistant invited seven candidates, including the Applicant, for a written test scheduled to take place on 2 February 2016.

6. By email to the Head, Field Human Resources Office (“H/FHRO”), dated 3 February 2016, the Applicant raised issues regarding the written test. On 4 February 2016, another candidate for the post questioned the appropriateness of the written test for a senior position.

7. By email to the Chief, Ethics Office (“CEO”) dated 18 February 2016, the Applicant complained about the recruitment process. On 21 February 2016, the CEO responded that the Ethics Office has no authority over a recruitment process, and that the
Applicant should raise his concerns with the H/FHRO. Furthermore, the CEO recommended that he submit a request for protection against retaliation with the Ethics Office in the event he believed that he may have been the subject of retaliation.

8. By email dated 24 February 2016, the Applicant complained to the Department of Internal Oversight Services (“DIOS”) with regard to the recruitment process. The Applicant offered that it was the same person who had prepared the test questions and the model answers, and then subsequently had scored the test too. Furthermore, the Applicant claimed that the test was tailored, and that the recruitment process was modified beforehand. He specified that if anyone looked at the test results, it would be obvious that the test was shared with certain individuals before the exam.

9. Following the complaints, the H/FHRO cancelled the first written test.

10. By email dated 29 February 2016, the Applicant was invited for another written test to take place on 3 March 2016. By email sent on the same day, the Applicant declined to take part in the second test noting that he had “no faith in our current written test process or its transparency”.

11. On 11 March 2016, the Applicant sent another email to the DIOS referring to his previous email sent on 24 February 2016, and attaching two more documents.

12. By email dated 28 March 2016, the Chief, Investigations Division, DIOS informed the Applicant that the DIOS would not undertake further action in relation to his complaint as there was no evidence that the initial test was anything other than a mistake and a new test had been issued with increased confidentiality and parameters.

13. On 6 April 2016, by email to the Chief, Investigations Division, DIOS, the Applicant contested their decision.

14. By email to the Director of Human Resources, dated 22 April 2016, the Applicant requested the review of “the decisions made by the HR-WB [Human Resources – West Bank] and the DIOS at HQ [Headquarters] Amman (“HQA”)”. The Agency did not provide a response.
15. On 18 August 2016, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 21 August 2016.

16. On 20 September 2016, the Respondent filed his reply. The reply was transmitted to the Applicant on 21 September 2016.

17. By Order No. 031 (UNRWA/DT/2017) (“Order No. 031”) dated 22 February 2017, the Tribunal ordered the Respondent to submit all documents relevant to the DIOS’ decision not to undertake any further action in relation to the Applicant’s complaint, particularly the report of investigation, if any.

18. On 8 March 2017, the Respondent filed a motion for extension of time to file his response to Order No. 031. The motion was transmitted to the Applicant on 9 March 2017.

19. On 20 March 2017, before the Tribunal issued an Order in this regard, the Respondent filed his response to Order No. 031. The response was transmitted to the Applicant on 27 March 2017. The Tribunal accepted the response to Order No. 031 in the case record.

**Applicant’s contentions**

20. The Applicant contends:

   i) The hiring department should not have added significant conditions and information during the examination;

   ii) The hiring department should have been part of preparing and scoring of the first written test;

   iii) The Agency made no efforts to address any expressed concerns. Reports of potential corruption were not addressed;

   iv) The first written test was tailored, and questions did not correspond with the vacancy announcement;

   v) Four automatically short-listed candidates did not take the second written test as they found the process non-transparent;
vi) No action was taken to minimise the risks of retaliation, and retaliation attempts did not stop;

vii) Hostile and offensive work environment, use of intimidation, instigation, threats and assaults by various influential staff members were reported to the West Bank Front Office but were not addressed, and no investigations were conducted; and

viii) The Legal Assistance Office at HQA stated that the Legal Assistant could not represent him at the UNRWA Dispute Tribunal.

21. The Applicant requests to re-do the recruitment process and to be protected from retaliation.

**Respondent’s contentions**

22. The Respondent contends:

   i) No appealable administrative decision has been presented as the first written test was cancelled, and the Applicant unilaterally decided not to participate in the second written test; and

   ii) To the extent the Applicant may challenge the decision not to pursue a complaint of prohibited conduct, this decision is not properly before the Tribunal, as the Applicant has not contested the decision not to take action following his complaint. By email dated 28 March 2016, the DIOS declined to undertake any further action in relation to the Applicant’s complaints; however, the Applicant did not challenge this decision in his application.

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

**Considerations**

*Selection process*

24. In his application, the Applicant contests several decisions. Three of the contested decisions concern the first written test; the fourth contested decision concerns the second written test.
25. The Agency’s decisions may be challenged only in the context of an appeal against the outcome of the selection process. It is clear to the Tribunal that, after the first written test, there was no outcome of the selection process yet. The first selection process was cancelled after having been challenged by the Applicant and another candidate. Subsequently, another selection process was started. Consequently, decisions concerning the first written test were not subject to appeal as, in fact, there had not been a chance for selection for the position. Therefore, the Applicant has no standing to contest the first selection process.

26. As held by the United Nations Appeals Tribunal (the “UNAT”) in Ishak 2011-UNAT-152, at paragraph 29:

A selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the UNDT.

27. Furthermore, the Applicant contests the Agency’s decision to conduct a second selection process for the same post. However, the Applicant is not able to contest that decision, as he himself voluntarily decided not to participate in the written test which was part of the second selection process. Consequently, he has no standing to contest the decision to conduct a second selection process.

Complaint

28. The role of the Tribunal is to clarify the scope of an application when this is needed. The Respondent notes that there are various allegations made in the present application. The Respondent claims that the decision to close the Applicant’s complaint is not receivable, as the Applicant, in his application, did not list the decision not to take action following his complaints.

29. While reviewing the case file, the Tribunal finds the following. By email dated 24 February 2016, the Applicant complained to the DIOS about the first selection process. By email dated 28 March 2016, the Chief, DIOS informed the Applicant that the DIOS would not undertake any further action in relation to his complaint. By email dated 22 April 2016, the Applicant submitted a request for review of the decisions made by the department of HR and the DIOS. It is clear to the Tribunal that the Applicant was seeking review of the decision.
to close his complaint. However, in his application, the Applicant did not identify, as such, the decision to close his complaint as a contested decision. In fact, the Applicant clearly identified four other decisions that he contested. It is the Tribunal’s role to determine the Applicant’s intent when an application is filed. However, when the Applicant himself, in his application, clearly identifies the contested decisions, including the dates of the decisions, there is no room left for interpretation on the part of the Tribunal. Consequently, the Tribunal holds that there is no clear indication that the Applicant, in his application, sought the judicial review of the decision to close his complaint.

Conclusion

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

The application is dismissed.

(Signed)

Judge Jean-François Cousin
Dated this 19th day of June 2017

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

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman