ABU SHABAB

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT

Counsel for Applicant:  
Self-represented

Counsel for Respondent:  
Rachel Evers (DLA)
Introduction

1. This is an application by Ahmad Abu Shabab (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 extend his fixed-term appointment.

Facts

2. Effective 13 November 2012, the Applicant was employed by the Agency on a fixed-term appointment as a Teacher at Suf Camp Preparatory School No. 2, Grade 8, Step 1. The appointment was subject to a probationary service of 12 months.

3. An additional undertaking was signed by the Applicant on 6 December 2012, stating:

   In addition to the requirement of Clause 4 of your letter of appointment mandating the satisfactory completion of a probationary period, you are required, within a period of three years from the date of this appointment, to successfully complete a course of Teacher Training acceptable to the Agency and resulting in a Diploma of Education based on “Teacher Qualification” standards.

   By signing this undertaking, you acknowledge that obtaining the training course is solely your responsibility and that UNRWA holds no responsibility for providing or financing the Diploma.

   If you fail to live up to your obligation in this regard, your fixed term contract will not be extended.

4. By letter from the Human Resources Career Management Officer, dated 7 November 2013, the Applicant was informed that he had satisfactorily completed his probationary period, and that consequently, his fixed-term appointment was confirmed.

5. By letter dated 16 March 2015, the Human Resources Services Officer (“HRSO”) reminded the Applicant of his obligation in respect of the undertaking which the Applicant had signed on 6 December 2012.
6. By memorandum dated 19 April 2015, the Head Teacher Development & School Empowerment Unit (“H/TDSEU”) in Headquarters Amman, transmitted to the Director of UNRWA Operations, Jordan (“DUO/J”) the certified results of examinations taken by the teachers in the Education Programme (“EP”) courses. The results showed that the Applicant had failed the written mathematics examination. In August 2015, the Applicant had another opportunity to successfully complete the examination in the EP courses.

7. By email dated 12 September 2015, the Deputy DUO/J approved a one-year extension of appointments for those teachers who were enrolled in the EP courses but whose final results had not been released yet. The Applicant was one of the teachers whose appointment was renewed for one year.

8. On 17 September 2015, the results of the Applicant’s August examination showed that he had passed the “Education Examination” and failed the “Specialization 1”, scoring 50 out of 100 when the passing score was 60.

9. By letter dated 1 November 2015, the Applicant was notified by the HRSO that his fixed-term appointment had been exceptionally extended for a period of one year, until 12 November 2016. The letter stated that the extension was offered to give him a final opportunity to successfully complete a course in teacher training, based on the Agency’s teachers’ qualification standards. The letter also indicated that, if he failed to get a diploma in education acceptable to the Agency, his appointment would not be renewed.

10. In January 2016, the Applicant had an opportunity to pass the specialisation course which he had failed in August 2015. By memorandum dated 22 February 2016, the H/TDSEU transmitted to the DUO/J the certified results of the examinations taken by the teachers in the EP courses. The results revealed that the Applicant had failed the written mathematics examination. On 24 February 2016, the examination papers were reviewed again and it was found that the Applicant deserved another opportunity to pass the specialisation course.

11. The Applicant had a last opportunity to pass the specialisation course in September 2016. The results for the final assessment were certified by the
H/TDSEU on 30 October 2016. The certified results showed that the Applicant had failed the mathematics specialisation examination. The Applicant was assessed to have failed the specialisation examination, having scored 35 out of 100.

12. By email dated 30 October 2016, the Staff Services Officer notified the Head, Field Human Resources Office that the Applicant, together with another teacher, had failed to successfully complete the EP course.

13. The Applicant was informed by letter from the DUO/J dated 9 November 2016, that his fixed-term appointment was due to expire on 12 November 2016, and that it would not be renewed.

14. On 17 November 2016, the Applicant filed a request for decision review. The Applicant had attached to the decision review, a letter requesting a last chance as a humanitarian gesture.

15. On 13 November 2016, the Applicant was separated from service upon the expiry of his fixed-term appointment.

16. By letter dated 14 December 2016, directed to the DUO/J, the Applicant alleged that he had failed his examination because he had been harassed. He requested the issue to be investigated.

17. On 28 December 2016, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on the same day.

18. On 31 January 2017, 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 the same day.

19. By Order No. 025 (UNRWA/DT/2017) dated 12 February 2017, the motion was granted.

20. On 3 March 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 5 March 2017.
21. On 22 March 2017, the Respondent filed a “Motion for Extension of Time to Translate the Reply”. The motion was transmitted to the Applicant on 23 March 2017.

22. By Order No. 051 (UNRWA/DT/2017) dated 2 April 2017, the motion was granted.

23. On 7 April 2017, the Respondent filed the Arabic translation of the reply. The translation was transmitted to the Applicant on 9 April 2017.

24. On 17 April 2017, the Applicant submitted his observations with respect to the Respondent’s reply on the motion form. The Tribunal accepted the Applicant’s observations into the case record. The observations were transmitted to the Respondent on 17 April 2017.

25. By Order No. 125 (UNRWA/DT/2017) dated 14 September 2017 (“Order No. 125”), the Respondent was ordered to provide the Applicant’s examination papers to the Tribunal.

26. On 3 October 2017, the Respondent filed a “Motion for Extension of Time” to respond to Order 125. On 4 October 2017, the motion was transmitted to the Applicant.

27. By Order No. 144 (UNRWA/DT/2017) dated 12 October 2017, the Respondent’s motion was granted.

28. The Respondent submitted his response to Order No. 125 on 25 October 2017. The response was transmitted to the Applicant on the same day.

Applicant’s contentions

29. The Applicant contends:

   i) During the examination he was harassed by the supervisor of the EP course; and
ii) He had asked to see his examination results, but he was denied access to his examination papers.

30. The Applicant requests:

i) The renewal of his appointment;

ii) Controls to be established with regard to the testing mechanism;

iii) The staff members who engage in harassment of others in the Agency to be held accountable; and

iv) To be provided with a last chance to take the EP course, and to give him access to his examination paper.

Respondent’s contentions

31. The Respondent contends:

i) The decision not to extend the Applicant’s appointment was properly effected;

ii) The non-extension of the Applicant’s appointment was due to the Applicant’s failure to complete the required teacher training course;

iii) Despite the exceptional one year extension of the Applicant’s appointment, he did not manage to successfully complete the teacher training course;

iv) The Applicant has not submitted any convincing evidence to suggest that the Agency did not act fairly, justly or transparently; or that the decision was motivated by bias, prejudice or improper motive;

v) The Applicant’s suggestion that he was unable to successfully complete the teacher training course because of harassment is clearly an afterthought, as this issue was only brought to the attention of the DUO/J well after the issuance of the impugned decision; and
vi) Access to the Applicant’s examination papers has no relevance to the non-renewal of his appointment.

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

Considerations

33. The Applicant contests the Agency’s decision not to extend his appointment. On 6 December 2012, the Applicant had signed an undertaking agreeing that he was required, within a period of three years from the date of his appointment, to “successfully complete a course of Teacher Training acceptable to the Agency resulting in a Diploma of Education” based on the Agency’s teachers’ qualification standards. The undertaking also stated that if the Applicant failed to fulfil his obligation in this regard, his fixed-term appointment would not be extended.

34. Looking at the legal and administrative framework applicable in the case at bar, the Tribunal notes that Area Staff Rule 109.5 provides:

A fixed-term appointment shall expire without prior notice on the expiration date specified in the letter of appointment.

35. On 12 November 2015, the Applicant’s fixed-term appointment was due to expire. By letter dated 1 November 2015, the Applicant was notified by the HRSO that his fixed-term appointment had been exceptionally extended for a period of one year, until 12 November 2016. The letter stated that the extension was offered to give him a final opportunity to successfully complete a course in teacher training, based on the Agency’s teachers’ qualification standards. The letter also indicated that, if he failed to get a diploma in education acceptable to the Agency, his appointment would not be renewed.

36. In response to Order 125, the Respondent submitted copies of the Applicant’s examination papers and related correspondence of the Agency. It is clear from the submission that for the examination taken in August 2015, the Applicant had passed the “Education Examination” and failed the “Specialization 1”. The passing score was 60 out of 100, and the Applicant had scored 50. The Applicant had a second
opportunity for the specialisation course in January 2016. While the first issued results indicate that the Applicant failed the specialisation course, the Respondent’s submission shows that, on 24 February 2016, the Agency found that the Applicant deserved another opportunity, changing his result from “failed” to “deferred”. The Applicant obtained a third opportunity for the specialisation course in September 2016. This time the Applicant scored 35 out of 100. Accordingly, the results for the final assessment, certified on 30 October 2016, showed that the Applicant had failed the specialisation course. By letter from the DUO/J, dated 9 November 2016, the Applicant was informed that his fixed-term appointment was due to expire on 12 November 2016, and that it would not be renewed.

37. The Tribunal notes that it transmitted to the Applicant copies of his examination papers. Therefore, the Applicant cannot claim that he did not have access to his examination papers. Furthermore, the Applicant did not submit any response to the transmitted documents.

38. With respect to the Applicant’s allegation that he had been harassed during the examination, the Tribunal finds the following: After having reviewed the case file, the Tribunal finds that the exchanges and/or incidents between the Applicant and one of the supervisors of the EP courses may have been a cause of distraction for the Applicant. However, the Tribunal fails to see how these incidents constitute harassment against the Applicant. Additionally, these incidents occurred only on two of the occasions while the Applicant himself acknowledged that he had spent four years in EP courses and had not managed to pass the required examination at any point during this period. Consequently, the Tribunal finds that, considering the period of four years and at least four opportunities for passing the required examination, the Applicant has been given ample opportunity to pass the examination. Lastly, as the Applicant did not assert a claim of harassment right after his examinations, but only complained one month after the expiry of his appointment, the Tribunal considers that the alleged incidents were claimed in an attempt to strengthen the Applicant’s case rather than them being crucial events which had caused the Applicant to fail his examinations.
39. The Tribunal agrees with the Respondent’s submission that the Applicant was accorded opportunities by the Agency to complete the required course in teacher training. The non-extension of the Applicant’s appointment was due to his own failure to complete the required training despite the exceptional extension of his appointment.

40. The Tribunal finds that the Applicant has not met his burden of showing that the decision not to renew his appointment was exercised arbitrarily or capriciously, motivated by prejudice or other extraneous factors or flawed by procedural irregularity or error of law. The Tribunal notes that the Applicant did not satisfy his duty to successfully complete a course of teacher training acceptable to the Agency. For that reason alone the Agency was entitled not to renew the Applicant’s appointment.

Conclusion

41. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 20th day of November 2017

Entered in the Register on this 20th day of November 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman