UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/JFO/2017/011
Judgment No.: UNRWA/DT/2017/042
Date: 7 December 2017
Original: English

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

SALEM

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

JUDGMENT

Counsel for Applicant:
Amer Abu-Khalaf (LOSA)

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Ayat Mohammad Salem (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”), to extend her Limited Duration Contract for only two months and 10 days instead of six months.

Facts

2. Effective 20 April 2016, the Applicant was employed by the Agency as a Protection Information Management & Reporting Officer at the Jordan Field Office (“JFO”) on a Limited Duration Contract (“LDC”) with an expiration date of 19 October 2016.

3. By email dated 21 August 2016 to the Director of the UNRWA Operations, Jordan (“DUO/J”), the Applicant made a complaint for abuse of power against the Protection Mainstreaming Officer (“PMO”).

4. By email dated 18 October 2016, the Applicant informed the Operations Support Officer, Team Leader & Field Protection Coordinator (“OSO/FPC”) that she would only agree to an extension of her appointment if her LDC were to be extended for at least six months.

5. By email dated 19 October 2016, the OSO/FPC explained to the Staff Services Officer (“SSO”) the position of the Applicant as follows:

   As you can read below (“[...] whatever the new position will be I am interested in current contract extension if is [sic] for six months at lease [sic] not less than that [...]” and as Ayat confirmed again to me in a meeting I had with her yesterday afternoon, despite my explanations about the possible opportunity this planned change on the position could be for her, Ayat decided not to accept the extension we were proposing to her. This is of course completely her choice and we certainly fully respect it (emphasis in original).

6. On 19 October 2016, upon the expiry of her appointment, the Applicant was separated from the Agency.
7. By a memorandum to the joint investigators dated 25 October 2016, the DUO/J set out the terms of reference for a preliminary assessment into the Applicant’s complaint of prohibited conduct.

8. Although the preliminary assessment report dated 13 November 2016 noted that the Applicant’s complaint was credible, it was recommended that the case be closed as the Applicant and the PMO were no longer staff members.

9. On 8 December 2016, the Applicant submitted a request for review of the decision to extend her LDC for only two months and 10 days instead of six months. The DUO/J affirmed the contested decision on 8 January 2017.

10. On 12 February 2017, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 13 February 2017.

11. On 15 March 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 16 March 2017.

12. By Order No. 160 (UNRWA/DT/2017) dated 12 November 2017, the Tribunal ordered the Respondent to provide a copy of the outcome of the Applicant’s complaint.

13. On 27 November 2017, the Respondent submitted the requested document. This was transmitted to the Applicant on 28 November 2017.

**Applicant’s contentions**

14. The Applicant contends:

   i) She was subjected to discrimination by the OSO/FPC;

   ii) The decision not to extend her LDC for six months was taken in retaliation for her complaint and her supervisor abused his power;
iii) She received contradicting information with regard to the reasons for the non-renewal of her LDC for six months and she was deliberately informed of the non-renewal the day before the last day of her service;

iv) She was also deprived of the renewal of her LDC for two months and 10 days; and

v) The Agency abused the terms of her contract and the Rules and Regulations of the Agency by not renewing her LDC while there was availability of funding, her performance was evaluated as “good”, and there was still a need for the post.

15. The Applicant requests:

i) Rescission of the impugned decision;

ii) A fair outcome of her complaint of abuse of power; and

iii) Compensation for her unemployment from 20 October 2016 until her return to the position she had.

**Respondent’s contentions**

16. The Respondent contends:

i) The non-renewal of the Applicant’s LDC was properly effected. Due to financial and managerial considerations, the contract could not be renewed;

ii) The Applicant herself chose not to accept an extension until 31 December 2016; and

iii) The Applicant failed to produce any evidence that the decision was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.

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

Non-renewal

18. The Applicant contests the decision not to extend her LDC for a period of six months. It is not contested by the Applicant that when she was offered an extension for two months and 10 days, she had refused the offer, explaining that she would only accept an extension for at least six months.

19. 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.

20. Area Staff Circular No. 4/95, dated 5 April 1995, on Area Staff posts and appointments, provides in paragraph 6:

   Extension of appointments will depend on the Agency’s continuing need for the post, the availability of funding and the staff member’s performance.

21. The United Nations Appeals Tribunal (“UNAT”) held in Pirnea 2013-UNAT-311, paragraph 32, as follows:

   It is well-established that a fixed-term appointment has no expectation of renewal or conversion to another type of appointment. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive. The staff member has the burden of proving such factors played a role in the administrative decision (footnotes omitted).

22. By email dated 19 October 2016, the OSO/FPC explained the motives of the impugned decision as follows:

   [H]er position being no more under Emergency/SEA funding but under the new OSO funding contract, it is planned as per the new funding contract to upgrade and expand the scope of responsibilities of the position. This process having to be conducted in the coming weeks and months, this is the reason we could only propose her a new extension for now until end of December 2016.
23. The Applicant has the burden of proof to show that the above-mentioned justification was false as reiterated in *Hepworth* 2015-UNAT-503, paragraph 44, as follows:

> Our jurisprudence places the burden on the *staff member* to show a legitimate expectancy of renewal or that the non-renewal of his fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive against the staff member (emphasis in original).

24. It is clear from the case file that the Applicant acknowledged that her performance, which was evaluated as “good”, was not the reason for the non-renewal decision. The OSO/FPC’s email dated 19 October 2016, demonstrates that the non-renewal decision was due to a change in the source of funding for the Applicant’s post. In this respect, the Tribunal is satisfied with the justification provided by the Respondent.

*Retaliation*

25. By email dated 21 August 2016 to the DUO/J, the Applicant made a complaint for abuse of power against the PMO. In this respect, the Applicant contended in her application that the non-renewal decision was motivated by retaliation as she had previously filed a complaint against the PMO. The Applicant further added that she had received contradicting information with regard to the reasons for the non-renewal of her LDC.

26. In this respect, the Tribunal notes that the preliminary assessment report dated 13 November 2016 concluded that the Applicant’s complaint for abuse of power arising out of the incident between her and the PMO during a joint trip to Aqaba on 17 and 18 August 2016 was credible. However, the Tribunal also points out that the Applicant’s Performance Evaluation Report (“PER”) was signed by the PMO on 18 October 2016. The Tribunal notes that the PMO concluded at the end of the Applicant’s PER as follows:

> The staff member has had a good first six month with the protection unit, displayed a good performance and I recommend
an extension of her current contract to the end of the year: 31 December 2016.

27. In light of the above facts, the Tribunal considers that the Applicant’s complaint against the PMO did not result in retaliation against the Applicant and that her contentions do not demonstrate that the justification provided by the Respondent was a false one. Therefore, the Tribunal holds that no retaliation had occurred against the Applicant following her complaint against the PMO.

Conclusion

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

The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 7th day of December 2017

Entered in the Register on this 7th day of December 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman