Before: Judge Jean-François Cousin

Registry: Amman

Registrar: Laurie McNabb

ELAYYAN

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 Fawzi Salameh Elayyan (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 select him for the post of Area Education Officer, North Amman.

Facts

2. On 25 October 1981, the Applicant was appointed as Teacher D, at Irbid Sub Area. Effective 1 July 1999, the Applicant was appointed as School Supervisor, Grade 12, at South Amman Area.

3. Effective 1 September 2011, the Applicant’s post was reclassified as Education Specialist, Grade 13.

4. Effective 1 November 2015, the Applicant was transferred to the post of Professional Development and Curriculum Coordinator, Grade 15.

5. By Jordan Field Staff Bulletin No. J/61/2015 dated 2 November 2015, the Applicant was appointed as Acting Area Education Officer, North Amman. The Applicant held this position at the time relevant to the material events in this application.

6. Between 4 September 2016 and 3 October 2016, the Agency published internally and externally, a vacancy announcement for the post of Area Education Officer, North Amman (“AEO/NA”), Grade 17, in the North Amman Area.

7. The Agency received 850 applications for the post. Thirty nine candidates, including the Applicant, were shortlisted. A written test was held on 17 November 2016. Seven candidates, one of whom was the Applicant, were invited for a personal interview on 4 January 2017.

8. The Interview Panel was comprised of the Chief Area Officer (“CAO”), North Amman, the Chief Technical and Vocational Education and Training
(“C/TVET”), the Deputy Chief Field Education Programme (“D/CFEP”), and a representative from the Human Resources Department.

9. The Interview Panel noted that the Applicant fully met the competencies of communication skills, leadership, problem solving and teamwork. The Applicant was recommended as the second priority candidate. The Interview Panel noted that the first priority candidate scored higher than the Applicant.

10. On 12 January 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) approved the recommendation for the appointment of the first priority candidate.

11. By email dated 15 January 2017, the Recruitment Officer informed the Applicant that he was ranked second on the roster, which was valid for twelve months.

12. On 25 January 2017, the Applicant requested review of the decision not to select him for the post of AEO/NA.

13. On 1 February 2017, the Applicant resumed his duty as Professional Development and Curriculum Coordinator.

14. On 21 March 2017, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 22 March 2017.

15. On 21 April 2017, the Respondent filed a “Motion for Extension of Time to File a Reply” outside the 30 calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. On 23 April 2017, the motion was transmitted to the Applicant.

16. By Order No. 062 (UNRWA/DT/2017) dated 4 May 2017, the Respondent’s motion for extension of time to file a reply was granted.

17. On 18 May 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 21 May 2017.
18. On 28 May 2017, the Applicant filed a “Motion for Leave to Submit Observations on the Respondent’s reply”. The motion was transmitted to the Respondent on the same day.

19. By Order No. 069 (UNRWA/DT/2017) dated 8 June 2017, the Applicant’s motion was granted.

20. The Applicant filed his observations on 20 June 2017. The observations were transmitted to the Respondent on the same day.

**Applicant’s contentions**

21. The Applicant contends:

   i) On November 2015, he was selected through a formal competitive process as Acting AEO/NA until January 2017. He had not received any negative remark about his performance over that period;

   ii) The Interview Panel evaluated him only on the basis of the interview and ignored the written test, his experience, and his performance evaluations. This is not in accordance with Area Staff Personnel Directive A/4 Part II (“PD A/4”);

   iii) The Interview Panel did not include a voting member from the Recruitment Administrator. There was only representation by a non-voting Human Resources Assistant B, whose grade is incongruent with the seniority of the advertised post. This is not in accordance with the provisions in PD A/4 with respect to the composition of Interview Panels;

   iv) The Interview Panel did not include an international staff member. This would typically be arranged in recruitment exercises for such senior Area Staff positions;

   v) During the interview, the panel members interrupted him by dispersing and distracting questions in an attempt to mislead him. Two of the panel members were biased and partial; and
vi) He deserved to be ranked as first priority on the roster.

22. The Applicant requests:

i) To cancel the decision to appoint the selected candidate and subsequently rank him as first priority on the roster; and

ii) To be provided with the technical test results and the interview comments.

**Respondent’s contentions**

23. The Respondent contends:

i) The selection process was properly effected; the Applicant fully met all of the four required competencies. The successful candidate fully met three and exceeded one of the competencies. The Interview Panel relied on the technical written test and recommended the selected candidate as the first priority candidate for appointment, as his score was higher than the Applicant’s score;

ii) PD A/4 was complied with, as the recommendation was based upon a fair and independent assessment;

iii) The interview report is clear and the Interview Panel was cognizant of the written test results, the experience and the performance of the Applicant; the fact that the Applicant had been Acting AEO/NA does not necessarily mean that he should have been ranked as the first priority candidate;

iv) It is acknowledged that the Interview Panel did not include a voting member from the Recruitment Administration; however, the Applicant did not object to the composition of the panel during the interview. Furthermore, since the Panel had been unanimous in its decision, no prejudice was occasioned to the Applicant. Hence, had the Human Resources representative been a voting member, the results of the recruitment would not have changed; and
v) There is no rule or practice in regard to the presence of an international staff member in Interview Panels in recruitment exercises for senior Area Staff positions.

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

Considerations

Merits

25. The Applicant contests the decision not to select him for the post of AEO/NA. Following the interviews of seven candidates, who had scored 50 or higher out of 100 on the written test, the Applicant was recommended as the second priority candidate by the Interview Panel. The candidate recommended as first priority was appointed to the post of AEO/NA.

26. The Applicant claims that the Interview Panel was not composed in accordance with Area Staff Regulation 4.3 and PD A/4. The latter provides:

Composition of interview panels

69. Interview panels must consist of at least three and normally up to five members, and must include at least one representative of the Recruitment Administrator and one from the Hiring Department […] The representative of the Recruitment Administrator will be a voting member […]

27. The Interview Panel was comprised of the (“CAO”), the C/TVET, the (D/CFEP”), and a representative from the HR Department. It is clear from the interview reports, and, moreover, it is not contested by the Respondent, that the HR Representative was an assistant B who was not a voting member.

28. Therefore, it is established that the Interview Panel was composed in an irregular manner. The Respondent claims that this irregularity was without any consequence since the Interview Panel had been unanimous in its decision. The Tribunal finds that this contention is mere speculation. The Interview Panel was tasked to evaluate and rank the recommended candidates. The difference between
the scores of the selected candidate and the Applicant was small. A voting HR Representative could have weighed in extensively on the assessment of the candidates and could have persuaded other panel members that the Applicant should be the first priority candidate.

29. While not all irregularities automatically lead to the rescission of an administrative decision, this single irregularity is of such significance as it could well have affected the outcome of the recruitment process. Accordingly, the Tribunal does not need to consider the Applicant’s other contentions and decides that the decision not to select the Applicant must be rescinded.

30. As the rescinded decision concerns an appointment, the Tribunal has to apply Article 10(5) of the Tribunal’s Statute which provides:

5. As part of its judgement, the Dispute Tribunal may order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph; […]

31. The Tribunal has to determine an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the decision.

32. In the present case, the test result, the interview, the experience, and the performance of the selected candidate and of the Applicant were of similar standing. Therefore, had the Interview Panel been properly constituted, the Applicant’s chances of being selected have to be considered as substantial.

33. It is obvious that the Applicant lost a chance to be selected to a higher grade. The Tribunal takes into account the loss of salary, as the post the Applicant applied for was classified at Grade 17, while the Applicant holds a post at Grade 15. In the event the Applicant had been selected, he would have been promoted according to Area Staff Rule 103.3, which provides in paragraph 2:
…] a staff member in continuous service shall receive an increase in base salary nearest to but not less than the value of two (2) salary steps in the higher grade, […]

34. Taking into account the Applicant’s significant chance to be selected and the increase in base salary in case of promotion, the Tribunal decides that, if the Agency chooses not to rescind the decision not to select the Applicant for the post of Area Education Officer, North Amman, it will have to pay to the Applicant the amount of USD2,000.

Conclusion

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

i) The decision not to select the Applicant is rescinded;

ii) If the Agency decides not to execute the rescission, the Respondent shall pay to the Applicant the sum of USD2,000; and

iii) The above sum is to be paid within 60 days of the date this Judgment becomes executable during which period the US Prime Rate, applicable as of that date, shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of the payment.

(Signed)

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Judge Jean-François Cousin
Dated this 16th day of April 2018

Entered in the Register on this 16th day of April 2018

(Signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman