ORABI

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 Orabi Ahmad Orabi (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 transfer him to the post of Clerk “B” in the North Lebanon Area.

Facts

2. On 8 August 2014, the Applicant was employed by the Agency on a fixed-term appointment as Health Centre Clerk, Grade 7, Step 1, at Wavel Camp Health Centre, Beqaa Area, Lebanon Field Office (“LFO”).

3. On 28 September 2016, the Applicant submitted a request for transfer to the post of Clerk “B” in the North Lebanon Area.

4. By letter to the Applicant dated 28 September 2016, the Human Resources Service Officer (“HRSO”) informed the Applicant that his request would be considered, together with other applicants’ requests, once such post became available.

5. By email to the Deputy Director of UNRWA Affairs, Lebanon (“D/DUA/L”) dated 14 March 2017, the Applicant questioned why his request for transfer had not yet been considered. On 15 March 2017, the Chief, Field Health Programme (“C/FHP”) responded to the Applicant that “the seniority for transfer purposes is determined based on the entry of duty (“EOD”) date of the continuous fixed-term appointment with UNRWA.”

6. By email to the C/FHP dated 15 March 2017, the Applicant questioned why he had not been informed that another staff member had been transferred to the post to which he had requested to be transferred. The C/FHP forwarded the Applicant’s email to the Head, Field Human Resources Office (“H/FHRO”) on the same day.
7. By email dated 16 March 2017, the H/FHRO responded to the Applicant that, in the case of a transfer, only the transferred staff member is informed about his or her new conditions of service.

8. On 15 March 2017, the Applicant sought the review of the decision not to transfer him to the post of Clerk “B” in the North Lebanon Area.

9. By letter dated 1 May 2017, the Director of UNRWA Affairs, Lebanon (“DUA/L”) affirmed the impugned decision.

10. On 30 May 2017, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on the same day.

11. On 29 June 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 3 July 2017.

12. By Order No. 010 (UNRWA/DT/2018) dated 16 January 2018, the Tribunal ordered the Respondent to produce the letter of appointment and the transfer request of the staff member who was, in fact, transferred to the post of Clerk “B” in the North Lebanon Area.

13. On 9 February 2018, the Respondent filed the requested documents. These were transmitted to the Applicant on 11 February 2018.

Applicant’s contentions

14. The Applicant contends:

   i) Contrary to the provisions of the Field Technical Instruction No. 01/2016 (“FTI 01/2016”), a staff member with less compelling humanitarian reasons was transferred to the post in question;

   ii) The Agency did not properly take into account the compelling humanitarian reasons in support of his transfer request;

   iii) He has, in fact, more seniority than the transferred staff member; and
iv) It was verbally confirmed to him repeatedly that he would be transferred to the post in question.

15. The Applicant requests:

i) To be transferred to Amqa Secondary School;

ii) To be compensated for the expenses he incurred for commuting to work; and

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

**Respondent’s contentions**

16. The Respondent contends:

i) The decision not to accede to the Applicant’s transfer request was reasonable and properly effected in accordance with FTI 01/2016;

ii) It has been the long-standing practice in the LFO to determine priority for transfer purposes in accordance with the date of EOD of the staff member. The transferred staff member’s EOD was 1 August 2014, and the Applicant’s EOD was 8 August 2014; and

iii) The relief sought by the Applicant has no legal basis.

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

**Considerations**

18. The Applicant contests the decision not to transfer him to the post of Clerk “B” in the North Lebanon Area. The Applicant claims that a staff member with less compelling humanitarian reasons was transferred to the said post instead of him.

19. The Respondent submits that the Agency properly applied FTI 01/2016 entitled “Lateral Transfers Initiated at the Request of Staff, Lebanon Field Office”. The FTI 01/2016, in relevant part, provides:
9. The Field Human Resources Officer shall consider if the request meets the following criteria:

a. The requesting staff member has presented one or more compelling humanitarian or personal reasons for the transfer; priority in this case goes to the more senior staff. [...] 

20. Both the Applicant and the transferred staff member submitted requests for transfer for personal and humanitarian reasons. The Agency decided to grant the request of the transferred staff member because of her seniority. In determining seniority among staff members, the practice at the LFO is to take into account the date of EOD of the staff member. The LFO determined that the Applicant’s EOD was 8 August 2014, and the EOD of the transferred staff member was 1 August 2014.

21. The Applicant claims that his seniority was miscalculated as his services as a daily-paid worker were not taken into account. In this regard, the Tribunal agrees with the Respondent that the seniority of a staff member must be calculated from the date on which he/she is appointed as a staff member and that his/her services as daily-paid worker cannot be taken in account.

22. The Applicant also claims that it was verbally confirmed to him repeatedly that he would be transferred to the post in question. However, the Applicant has not submitted any evidence in this respect. Furthermore, in his application, the Applicant admits that he had never received any official confirmation in writing of his transfer to the post in question. Therefore, the Tribunal holds that the Agency correctly applied the provisions of FTI 01/2016 and that the application must be dismissed.
Conclusion

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

    The application is dismissed.

(Signed)

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Judge Jean-François Cousin
Dated this 22nd day of April 2018

Entered in the Register on this 22nd day of April 2018

(Signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman