HABBOUSH

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 Haitham Habboush (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 Head, Service Delivery Section in Headquarters Amman.

Facts

2. Effective 11 September 1994, the Applicant joined the Agency as Information System Officer. The Applicant currently holds the position of Head, Data Centre Operations in Headquarters Amman (“HQA”).

3. In November 2015, the Agency had advertised the post of Head, Service Delivery Section, P-4 in HQA. On 14 July 2016, the post was re-advertised as the pool of candidates from the first advertisement was considered weak.

4. Following the re-advertisement, 17 candidates were shortlisted, one of whom was the Applicant. The Applicant was invited for a written test on 16 November 2016. The Applicant took the written test together with four other internal candidates in the Computer Training Room in HQA. The external candidates took the test online between 14 and 16 November 2016.

5. Ten candidates, including the Applicant, received a grade of 50 percent or higher and were considered to have passed the written test. The Recruitment Section decided to interview only the top four candidates. Two of the candidates were internal and two were external to the Agency. The Applicant was not among the top four candidates.

6. On 24 January 2017, following the interviews, one of the external candidates was recommended for appointment by the Interview Panel.

7. By email of 29 January 2017, the Applicant complained to the Director of the Human Resources Department (“DHR”) about the difference in treatment between the internal and the external candidates. The Applicant claimed that it was not fair
that the external candidates had taken the written test online with access to internet and resources of their choice, while the internal candidates had taken the test in a controlled environment without access to internet or any other resources.

8. By email of 30 January 2017, the Head of the Recruitment Section informed the Applicant that she had reviewed the test questions and instructions for both internal and external candidates and concluded that the recruitment process was in line with the International Staff Selection Policy.

9. On 14 February 2017, the Applicant requested review of the decision not to select him for the post of Head, Data Centre Operations in HQA.

10. On 30 May 2017, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 1 June 2017.

11. On 30 June 2017, the Respondent submitted a motion for an extension of time to file his reply. The motion was transmitted to the Applicant on 3 July 2017.

12. On 14 July 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 16 July 2017. The Tribunal has accepted the late filing of the Respondent’s reply in the case file.

**Applicant’s contentions**

13. The Applicant contends:

   i) Internal candidates took the test in a controlled room without access to any resources. External candidates were sent copies of the test and had all the resources available to them;

   ii) The external candidates obviously had an advantage over the internal candidates. They received higher scores than the internal candidates;

   iii) The test was not relevant for a post at this level; and
iv) He has all the required experience for the position. He has worked for the Agency for many years in the same field and received training from the Agency.

14. The Applicant requests:

i) Rescission of the decision selecting the candidate for the post; and

ii) Compensation for loss of opportunity and stress.

**Respondent’s contentions**

15. The Respondent contends:

i) The decision not to select the Applicant for an interview was properly effected according to International Staff Personnel Directive I/104.2/Rev.4/Amend.1 (“ISPD I/104.2”);

ii) The controlled testing environment for internal candidates has been established to offer fairness and equality between internal and external candidates in a recruitment process;

iii) The test was scored blindly and ten candidates passed the test. The top four candidates were invited for an interview. Two of those candidates were internal and two were external; and

iv) The Applicant did not provide convincing evidence to support his claims of “abuse of procedure”.

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

**Considerations**

17. The Applicant contests the decision not to select him for the post of Head, Service Delivery Section in HQA. Seventeen candidates, one of whom was the Applicant, were shortlisted and invited for a written test. As a result, ten candidates
passed the test, receiving a grade of 50 percent or higher. Subsequently, the Recruitment Section decided to interview only the top four candidates. The Applicant was not among the top four candidates who were interviewed.

18. The United Nations Appeals Tribunals ("UNAT") has held, inter alia, in Ljungdell 2012-UNAT-265 as follows:

30. Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.

19. With regard to which party bears the burden of proof in a non-selection case, the UNAT has consistently repeated what has been held in Rolland 2011-UNAT-122, in relevant parts, as follows:

26. There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant’s candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

* * *

21. [...] A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

20. In the present case, the Applicant claims that the selection process was biased and in favour of external candidates. The internal candidates had to take the written test in a controlled room without access to internet or any other resources while external candidates received the same test via email, leaving them with access to all kinds of resources.
21. The Respondent acknowledges that the written tests were taken with different conditions for internal and external candidates, submitting that this practice is provided for by ISPD I/104.2:

Testing

39. Tests can be administered to either support the short-listing process or be conducted in conjunction with the personal interview to support the assessment of technical competencies, as determined by the Hiring Department. At any point, an internal candidate may be required to take a written test or other form of assessment in addition to the personal interview.

40. Where possible, the Recruitment Section will provide a controlled testing environment for internal candidates and other personnel on premises, given the advantage they have over external candidates in accessing information and Agency resources.

22. It is clear from the above-mentioned provisions that the Agency can organise written tests for internal and external candidates under different conditions, e.g. providing a controlled testing environment for internal candidates vis-à-vis providing the test to external candidates in their own environment. The given rationale for such policy is that internal candidates have an advantage over external candidates with respect to specific information and resources regarding the Agency. It is clear that the written tests were performed in line with this policy. Therefore, the written stage of the recruitment process was not conducted unlawfully. The Tribunal notes that, while the Applicant may not have been among the top four candidates after the written test, two of the four top candidates were, in fact, internal candidates, who were then called for an interview. Therefore, the Applicant’s complaint that external candidates had an unfair advantage over internal candidates is not supported by the facts.

23. The Applicant further submits that the conducted test was not relevant for a post at this level. However, the Tribunal recalls that the Hiring Department has broad discretionary authority in assessing the candidates’ technical competencies. Furthermore, the Applicant has not provided any evidence that the written test was absurd.
24. Lastly, the Applicant claims that he has all the required experience for the advertised post since he has worked for the Agency for many years in the same area of expertise and has also received training from the Agency. It is clear to the Tribunal that the Applicant has extensive experience with the Agency, and the Tribunal notes that the Applicant’s experience was, in fact, taken into account when he was shortlisted for the written test. However, the Applicant was part of a competitive selection process, and his test results were not among the top four candidates who advanced to the interview stage.

Conclusion

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

The application is dismissed.

(Signed)  
Judge Jean-François Cousin  
Dated this 17th day of May 2018  

Entered in the Register on this 17th day of May 2018

(Signed)  
Laurie McNabb, Registrar, UNRWA DT, Amman