ALI

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 Saber Daoud Ali (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 Chief, Field Education Programme, Jordan Field Office.

Facts

2. Effective 19 September 1978, the Applicant was employed by the Agency on a temporary indefinite appointment, Grade 6, Step 1, as Teacher “D” in the Amman Area.

3. After several transfers and promotions, effective 1 July 2012, the Applicant was appointed as Area Education Officer, Grade 17, South Amman Area.

4. From 12 August 2012 to 31 January 2013, the Applicant was appointed Officer-in-Charge, Deputy, Education Programme, Jordan during the absence of the incumbent of the post. Afterwards, the Applicant returned to his post of Area Education Officer.

5. On 30 August 2016, the Agency published, internally and externally, a vacancy announcement for the post of Chief, Field Education Programme, Jordan (“C/FEP”), Grade 20.

6. The Agency received 520 applications for the post, including the Applicant’s. Five candidates, including the Applicant, were shortlisted and invited for a written test on 18 December 2016. The Applicant and another candidate were invited for a personal interview. The Interview Panel (the “Panel”) concluded that the Applicant did not meet the requirements for the competencies of leadership and creativity, and partially met the requirements for the competencies of communication and team work. The Panel unanimously agreed not to recommend the Applicant for the post.
7. The Panel unanimously recommended the other interviewed candidate. On 28 February 2017, the Commissioner-General approved the appointment of the other candidate.

8. By letter dated 6 March 2017, the Applicant was informed that he had not been selected for the post of the C/FEP.

9. On 1 May 2017, the Applicant requested review of the decision not to select him for the post of the C/FEP.

10. On 29 July 2017, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 30 July 2017.

11. On 3 September 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 6 September 2017.

12. By Order No. 129 (UNRWA/DT/2017) dated 18 September 2017, the Tribunal granted the Respondent’s request for an extension of time.

13. On 28 September 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 3 October 2017.

14. On 27 December 2017, in the form of a motion, the Applicant filed his observations on the Respondent’s reply without asking leave of the Tribunal. The Tribunal has accepted into the case record the observations. The observations were transmitted to the Respondent on the same day.

**Applicant’s contentions**

15. The Applicant contends:

   i) The decision to appoint the selected candidate was taken before the written test and interview were conducted. The duties concerning the Technical and Vocational Training (“TVET”) Programme were later added
to the job description, which illustrates that the Agency had intended to select the other candidate;

ii) By emails to the Human Resources Career Management Officer (“HRCMO”) dated 9 and 11 January 2017, he had inquired about the job description and specifically about the duties concerning the TVET Programme; however, he never received a response;

iii) The selected candidate does not meet the requirements for the post; and

iv) He has more qualifications and experience than the selected candidate, and he performed very well during the interview.

16. The Applicant requests:

i) Rescission of the impugned decision; and

ii) Compensation for the psychological harm that he suffered.

**Respondent’s contentions**

17. The Respondent contends:

i) The selection process was properly effected; the Applicant’s candidacy was given a full and fair consideration;

ii) The Panel noted that the Applicant did not meet the requirements for the competencies of leadership and creativity, and partially met the requirements for the competencies of communication and teamwork. The Panel unanimously agreed not to recommend the Applicant for the post;

iii) The selected candidate met the requirements for the post. She possesses a doctorate degree (“PhD”) in Educational Psychology from the World Islamic Sciences University, Jordan. She has 13 years of experience as Paramedical Instructor at Community Intermediate Colleges and approximately 15 years of experience in senior managerial positions in educational institutions;
iv) The Applicant did not provide any evidence with respect to his allegation that the Agency intended to select the other candidate;

v) The Applicant asserts, without offering any evidence, that the duties of TVET Programme were added to the post description to give an advantage to the selected candidate;

vi) The Applicant has failed to sustain the burden of proof required to establish by convincing evidence that the decision not to select him for the post of the C/FEP was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law; and

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

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

Considerations

19. The Applicant contests the decision not to select him for the post of C/FEP. The Applicant and another candidate were invited for a personal interview. The Panel unanimously agreed not to recommend the Applicant for the post and recommended the other candidate. The Commissioner-General approved the appointment of the other candidate on 28 February 2017.

20. The Applicant claims that he has more qualifications and experience than the selected candidate and that he performed very well during the interview. The Respondent rightly submits that the Applicant’s experience was taken into account as he, in fact, was one of the two candidates invited for a personal interview.

21. The Applicant argues that the selected candidate did not meet the requirements for the post as contained in the job description; particularly, she does not have a PhD in educational management/planning, she does not have ten years of teaching experience, and she does not have the required knowledge and experience in “school education”. Nonetheless, as provided by the Respondent in
the case record, the selected candidate’s personal history file clearly demonstrates that she meets the minimum qualifications for the post. In particular, she obtained a PhD in 2016, in educational psychology from World Islamic Sciences University, Jordan. Furthermore, the recruitment report clearly establishes that the selected candidate has more than 19 years of teaching experience, of which more than seven were at a senior managerial level.

22. The Applicant further contends that the duties of TVET Programme were later added to the job description to give an advantage to the selected candidate. This contention of the Applicant has no merit. It is clear that both the vacancy announcement dated 30 August 2016, which was submitted by the Applicant with his application, and the post description dated 8 July 2013, which was submitted by the Respondent, include the duties concerning the TVET Programme.

23. The Applicant claims that he performed very well during the interview. However, the Panel concluded that the Applicant did not meet the requirements for the competencies of leadership and creativity, and partially met the requirements for the competencies of communication and team work. As a result, the Panel unanimously agreed not to recommend the Applicant for the post.

24. The Tribunal considers that the Commissioner-General properly exercised his discretionary authority by following the recommendation of the Panel. In this respect, it is not the function of the Tribunal to substitute its own decision for that of the Agency. As the United Nation Appeals Tribunal (the “UNAT”) stated in Sanwidi 2010-UNAT-084, at paragraph 40:

When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.
25. It follows from all of the foregoing that the Applicant has failed to sustain the burden of proof required to establish by clear and convincing evidence that the decision not to select him for the post of the C/FEP was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.

Conclusion

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

The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 30th day of July 2018

Entered in the Register on this 30th day of July 2018

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman