AL HAWI

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 Younis Al Hawi (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 the employment of Ms. S.J. in the post of Assistant Professor of English Language at the Faculty of Educational Sciences and Arts.

Facts

2. Effective 21 December 2002, the Applicant was employed as Teacher at Beqaa Elementary Boys School 2 in the Jordan Field Office (“JFO”) on a fixed-term appointment, Grade 6B. Following several extensions and promotions, on 22 December 2012, the Applicant’s appointment was converted to a Temporary Indefinite Appointment, Grade 10.

3. Effective 8 September 2013, Ms. S.J. was employed by UNRWA in the post of Assistant Professor - English Language on a Limited Duration Contract (“LDC”) expiring on 7 September 2014. Her appointment was subsequently extended three times, each time for one additional year, eventually expiring on 7 September 2017.

4. On 10 August 2016, a second post of Assistant Professor - English (Literature and Linguistics) became vacant following the resignation of the incumbent. On 19 October 2016, the Applicant was appointed to this post on an Acting basis, pending the post being filled after a recruitment.

5. On 28 February 2017, a vacancy announcement for the post of Assistant Professor - English (Literature and Linguistics) was advertised. The Applicant applied for the position.

6. On 5 March 2017, Ms. S.J. requested the Agency to change the modality of her contract from LDC to Individual Service Provider (“ISP”).
7. On 7 March 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) approved Ms. S.J.’s request to change the modality of her contract from LDC to ISP.

8. On 10 April 2017, the Applicant submitted a complaint to the DUO/J, contesting the legality of the decision to change Ms. S.J.’s contract modality into an ISP contract and claiming abuse of authority.

9. On 19 April 2017, the Officer-in-Charge UNRWA Operations, Jordan wrote a detailed letter to the Applicant, concluding that the Applicant’s claims of abuse of authority were unsubstantiated and his case was closed.

10. On 16 May 2017, the Applicant submitted a request for decision review.

11. By letter dated 19 June 2017, the DUO/J responded that the Applicant’s request for review was not receivable.

12. On 5 July 2017, the Applicant was notified of his ranking as the second priority candidate for the LDC of Assistant Professor - English (Literature and Linguistics) which would be valid for 12 months from 29 May 2017.

13. On 15 July 2017, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 17 July 2017.

14. On 16 August 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 17 August 2017.

15. On 27 August 2017, the Applicant filed a “Request to File Observations on the Respondent’s Reply”. On 28 August 2017, the request was transmitted to the Respondent.

16. By Order No. 123 (UNRWA/DT/2017) dated 11 September 2017, the Tribunal granted the Applicant’s request.
17. On 14 September 2017, the Applicant submitted his observations on the Respondent’s reply. The Applicant’s submission was transmitted to the Respondent on 17 September 2017.

**Applicant’s contentions**

18. The Applicant contends:

i) The “renewal of Ms. S.J’s contract” is unlawful as it was not in the interest of the Agency and it was not an exceptional case;

ii) Ms. S.J. was given a job which was supposed to be given to him; he has been denied the right to equally compete for the vacant post;

iii) The decision contradicts paragraph b of Rule 12.1, it is prejudicial to his interests in light of his ranking after his interview for the position of Assistant Professor - English (Literature and Linguistics), which had been conducted on 7 May 2017;

iv) Ms. S.J. got her job on the basis of bias, partiality, discrimination, nepotism and favouritism;

v) The illegal renewal was issued six months before its expiry without announcing the relevant post;

vi) After the contested decision was taken, UNRWA announced another vacant post of Assistant Professor - English (Literature and Linguistics) on 28 February 2017. There were five candidates for the post. Therefore, at the time of the renewal decision, it is clear that there were no difficulties in hiring assistant professors. The only concern was to secure a job for Ms. S.J;

vii) One of the two vacant posts was advertised, and the DUO/J granted privately the other vacant post to Ms. S.J on 7 March 2017; and

viii) UNRWA rules demand that all posts should be announced officially and be open to all qualified persons to compete equally and without bias.
19. The Applicant requests:

i) The rescission of the decision to give a new contract to Ms. S.J.;

ii) To be assigned to the post of “Assistant Professor of English Literature” at the Faculty of Educational Sciences and Arts (“FESA”), instead of Ms. S.J.; and

iii) To be granted compensation for the material damages and psychological harm.

**Respondent’s contentions**

20. The Respondent contends:

i) The impugned decision does not exist as the Agency did not renew the LDC after its expiry but rather issued an ISP contract instead;

ii) No appealable administrative decision has been presented as the Applicant has not established a breach of the terms of his appointment; and

iii) At the time of the decision to issue an ISP contract, the Applicant had not yet been recommended as the second selected candidate.

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

**Considerations**

22. The Applicant contests the decision to grant Ms. S.J. an ISP contract as Assistant Professor of English Language.

**Receivability**

23. The Respondent claims that the application is not receivable as the Applicant has not established that the contested decision had direct consequences on the terms of his appointment.
24. Some facts must be recalled. Effective 8 September 2013, Ms. S.J. was employed by UNRWA in the post of Assistant Professor - English Language on a LDC. Her appointment was subsequently extended three times for one year each time, and eventually her contract was set to end on 7 September 2017. A LDC cannot be renewed after four years.

25. On 10 August 2016, a post for Assistant Professor - English (Literature and Linguistics) became vacant in the FESA, and, effective 19 October 2016, the Applicant was appointed to the post on an acting basis.

26. On 28 February 2017, the vacancy announcement to fill the post of Assistant Professor – English (Literature and Linguistics) was advertised. The Applicant applied for the position.

27. On 5 March 2017, Ms. S.J. submitted a request to change the modality of her contract from a LDC to an ISP contract. On 7 March 2017, the DUO/J approved her request. This is the contested decision.

28. The Tribunal has no doubt that as of 19 October 2016, when the Applicant was appointed to the post of Assistant Professor - English (Literature and Linguistics) on an acting basis, he wanted to be selected to one of these posts in the FESA. As soon as the vacancy announcement for the post of Assistant Professor – English (Literature and Linguistics) was advertised, the Applicant applied. After he had gone through the recruitment process, he was informed that he was the second priority candidate for the post.

29. The Applicant also knew that Ms. S.J.’s LDC would expire on 7 September 2017, and that her contract could not be renewed due to the four-year limitation rule. Therefore, as acting Assistant Professor on a similar post, he could have reasonably expected that Ms. S.J.’s post would be declared vacant and that he could apply for the post. However, the decision not to advertise the post, but rather to hire Ms. S.J. under an ISP contract was a discretionary decision, which does not have any direct consequence on the Applicant’s terms of appointment or his contract.

30. The Tribunal recalls that Area Staff Rule 111.2 provides, in relevant part, that:
1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

31. The managerial decision to change the contract of a staff member cannot be contested before the Tribunal by another staff member. Expectations of a staff member that a post, for which he/she wishes to apply, will become vacant cannot give him legal standing for contesting this decision. Therefore, the Tribunal considers that the application is not receivable.

Conclusion

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

The application is dismissed.

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Judge Jean-François Cousin

Dated this 5th day of December 2018

Entered in the Register on this 5th day of December 2018

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Laurie McNabb, Registrar, UNRWA DT, Amman