ABDELFATTAH

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 Reem Mustafa Hussein Abdelfattah (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 her for the post of Administrative Assistant at the Faculty of Educational Sciences and Arts, Jordan Field Office.

Facts

2. Effective 1 April 2009, the Applicant was employed by the Agency on a fixed-term appointment, Grade 8, Step 1, as Secretary “C” at the Faculty of Educational Sciences and Arts (“FESA”), Jordan Field Office (“JFO”).

3. Effective 9 September 2010, the Applicant’s post was retitled as Administrative Assistant “D”.

4. Following a 2016 review of Administrative Support posts at the JFO, a revised administrative structure was adopted in 2017 in various sections of the JFO. Accordingly, certain posts were reclassified and others were abolished. The remaining Administrative Support posts were advertised for selection among the existing staff members in each section.

5. On 25 July 2017, the Agency published a vacancy announcement for the post of Administrative Assistant, Grade 9. The recruitment was limited to internal candidates who were working at the FESA.

6. The Agency received 105 applications for the post, including the Applicant’s. Two candidates, including the Applicant, were shortlisted and invited for a personal interview on 8 August 2017. The Interview Panel (the “Panel”) recommended that the Applicant be ranked second for the post.

7. On 10 August 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) approved the Panel’s recommendations.
8. On 14 August 2017, the Applicant was informed that she had been selected as the first rostered candidate for the post of Administrative Assistant, Grade 9, at the FESA.

9. By letter dated 13 September 2017, the DUO/J notified the Applicant that her current post would be abolished and that she would be declared “provisionally redundant” effective 11 September 2017, for a period of three months.

10. On 19 September 2017, the Applicant submitted a request for review of the decision not to select her for the post of Administrative Assistant, Grade 9, at the FESA.

11. By letter dated 8 October 2017, the DUO/J offered the Applicant an alternative suitable post as Senior Clerk at the Field Pharmacy, without changes to her grade and step. The Applicant accepted the offer on the same day. This is the Applicant’s current post.

12. By letter dated 19 October 2017, the Deputy, Commissioner-General affirmed the decision not to select the Applicant for the post of Administrative Assistant, Grade 9, at the FESA.

13. On 4 December 2017, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 13 December 2017.

14. On 12 January 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 14 January 2018.

15. On 26 January 2018, the Respondent filed a “Motion for Extension of Time to Translate a Reply”. The motion was transmitted to the Applicant on 28 January 2018.

16. By Order No. 014 (UNRWA/DT/2018) dated 29 January 2018, the Tribunal granted the Respondent’s request.
17. On 2 February 2018, the Respondent submitted the Arabic translation of his reply. The Arabic translation of the reply was transmitted to the Applicant on 4 February 2018.

**Applicant’s contentions**

18. The Applicant contends:

   i) She has the right to retain her post;

   ii) The selected candidate had been transferred to the FESA in 2012, but she was still registered in the staffing table of the Amman Training Centre. Accordingly, she was not entitled to apply for the vacancy at the FESA;

   iii) She has more experience and better academic qualifications than the selected candidate;

   iv) A post of Administrative Assistant and a post of Clerk are necessary for the proper functioning of the FESA; and

   v) The selection process was exercised arbitrarily and motivated by extraneous factors.

19. The Applicant requests:

   i) To be reinstated to her original post; and

   ii) To be compensated for the psychological harm she has suffered.

**Respondent’s contentions**

20. The Respondent contends:

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

   ii) The decision to recommend the Applicant as the second selected candidate was reasonable;
iii) The Panel found that the selected candidate’s overall performance in the interview was better than the Applicant’s performance;

iv) The Applicant has not explained which provisions of the Agency’s regulatory framework were breached by allowing the selected candidate to participate in the selection process;

v) Contrary to the Applicant’s allegation, the selected candidate was part of the FESA staff at the time of the recruitment;

vi) The selection process was free from arbitrariness or capriciousness, motivation by prejudice or other extraneous factors, procedural irregularity, or error of law;

vii) The Applicant did not have a right to retain her post; and

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

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

Considerations

Merits

22. The Applicant contests the decision not to select her for the post of Administrative Assistant, Grade 9, at the FESA, JFO.

23. The first contention raised by the Applicant is that she had an acquired right to retain her post as Administrative Assistant “D” at the FESA. This contention is not supported by any regulation or rule. On the contrary, Area Staff Regulation 9.1 provides as follows:

    The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.

24. In this respect, the Tribunal has no doubt that the decision to abolish the Applicant’s post was taken following a comprehensive review of the
Administrative Support posts at the JFO, and that this decision was taken in the interest of the Agency.

25. The Applicant further claims that the selected candidate was not entitled to apply for the vacancy at the FESA, as she was still registered in the staffing table of the Amman Training Centre. Nevertheless, the document entitled “Staffing Table Management” submitted by the Respondent clearly establishes that the selected candidate was indeed registered as a FESA staff member. Consequently, this claim of the Applicant is also without merit.

26. The Applicant also contends that she has more experience and better academic qualifications than the selected candidate and that she should have been appointed to the post of Administrative Assistant, Grade 9, at the FESA. In this respect, the Panel’s Recruitment Report indicates that the Agency received 105 applications for the post, and two candidates, including the Applicant, were shortlisted and invited for a personal interview.

27. With respect to the performances of the Applicant and the selected candidate during the interview, the Panel concluded that both the Applicant and the selected candidate had fully met the requirements for two competencies and partially met the requirements for one competency. As the two candidates obtained the same result in the interview, they were both recommended for the post. However, as the Panel had to rank the two selected candidates, it recommended that the Applicant be ranked second for the post. The DUO/J approved the Panel’s recommendations.

28. The Tribunal considers that the DUO/J 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.

29. Lastly, the Applicant claims that the selection process was exercised arbitrarily and motivated by extraneous factors, such as the distance of her residence to the FESA. However, these allegations are not supported by any evidence.

30. 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 her for the post of Administrative Assistant, Grade 9, at the FESA was exercised arbitrarily or capriciously, motivated by prejudice or other extraneous factors or flawed by procedural irregularity or error of law. Rather, the evidence clearly shows that the Applicant’s candidacy for the post was given a full and fair consideration.

Remedies

31. Consequently, the Applicant is not entitled to receive any compensation for the psychological harm that she allegedly suffered.
Conclusion

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

The application is dismissed.

(SIGNED)

Judge Jean-François Cousin

Dated this 24th day of January 2019

Entered in the Register on this 24th day of January 2019

(SIGNED)

Laurie McNabb, Registrar, UNRWA DT, Amman