EL HAJ

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 Suleiman Fuad El Haj (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 exclude him from the recruitment process for the reclassified post of Associate Human Resources Officer at the Human Resources Office, Lebanon Field Office.

Facts

2. Effective 1 November 2012, the Applicant was employed by the Agency on a project-funded fixed-term appointment, Grade 9, as Human Resources (“HR”) Assistant “B” at the Nahr El-Bared Camp, Project Management Unit, Lebanon Field Office (“LFO”).

3. Following the abolition of his post effective 28 February 2014, the Applicant was offered the post of HR Assistant “B”, Grade 9, at the HR Office, LFO.

4. Effective 10 November 2014, the Applicant was appointed, on a project-funded fixed-term appointment, to the post of “HR Associate A-REC” at the HR Career Management Division, Grade 12. The Applicant was assigned to handle all recruitment matters under Organization Directive 29 (“OD 29”) as part of the two-member OD 29 Unit team.

5. On 7 March 2017, the Head, Field Human Resources Office, LFO (“H/FHRO”) sought the approval of the Director of Human Resources (“DHR”) for upgrading three posts of HR Assistant B, Grade 9 to posts of Associate HR Officer, Grade 13 (“A/HRO”), one in each section, namely, in Recruitment, Entitlements and Movements and Records.

6. Following the revision of the HR Department’s structure, effective 1 July 2017, the Applicant’s post was reclassified to HR Assistant “B”, Grade 9, Step 11, with salary protection.
7. On 31 August 2017, the DHR approved the post descriptions for the reclassified posts of A/HRO (Recruitment), A/HRO (Entitlement) and A/HRO ( Movements and Records).

8. By email dated 29 September 2017, and entitled “Competition and upgrade to Associate HR Officer – implementation plan” the H/FHRO informed all staff members at the Human Resources Department, LFO, that the competitive recruitment process for the reclassified posts of A/HRO will be opened only to the incumbents of the programme-funded HR Assistant posts.

9. The interviews for the A/HRO posts were held on Monday, 30 October 2017. The interview list did not include the Applicant as he was not one of the programme-funded staff members of the HR Department.

10. On 23 November 2017, the Applicant submitted a request for decision review challenging the decision he referred to as the “[c]ompetition and upgrade of HR Assistant to Associate HR Officer”.

11. On 22 December 2017, the Director of UNRWA Affairs, Lebanon (“DUA/L”) affirmed the impugned decision.

12. On 3 January 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 4 January 2018.

13. On 2 February 2018, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30-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 4 February 2018.

14. By Order No. 023 (UNRWA/DT/2018) dated 14 February 2018, the Tribunal granted the Respondent’s request for an extension of time.

15. On 7 March 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 8 March 2018.
16. By Order No. 022 (UNRWA/DT/2019) dated 30 January 2019 (“Order No. 022”), the Tribunal ordered the Applicant to produce certain documents.

17. On 31 January 2019, the Applicant submitted his response to Order No. 022. This was transmitted to the Respondent on 7 February 2019.

Applicant’s contentions

18. The Applicant contends:

   i) The decision to exclude him from the recruitment process for the reclassified posts of A/HRO was discriminative; and

   ii) He was downgraded from his post of HR Associate, Grade 12, to the post of HR Assistant, Grade 9, effective 1 July 2017, because there were no further staffing needs in the OD 29 Unit team. Nevertheless, shortly after, three posts of A/HRO, Grade 13, were created, and he was specifically excluded from the recruitment process.

19. The Applicant requests:

   i) The cancellation of the recruitment process for the reclassified posts of A/HRO; the readvertisement of these posts and to be shortlisted in the new recruitment process for these posts; and

   ii) The Agency to upgrade all HR Assistants from Grade 9 to Grade 10.

Respondent’s contentions

20. The Respondent contends:

   i) The decision to exclude the Applicant from the recruitment process for the reclassified posts of A/HRO was properly effected. An internal selection process was preferred by the Agency for the upgrade of three programme-funded posts out of fourteen;
ii) The H/FHRO clarified in his email to all staff members in the HR Department that other project-funded HR Assistants or clerical posts would not be included in the competitive process, and this decision was in compliance with the Agency’s regulatory framework;

iii) The decision to reclassify the Applicant’s post to HR Assistant “B”, Grade 9, was the result of the revision of the HR Department’s structure and the reduction in the scope of the Applicant’s post;

iv) The Applicant was not discriminated against, as both the reclassification decision and his exclusion from the recruitment process for the reclassified posts of A/HRO also affected other HR Assistants; and

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

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

Considerations

22. In his request for decision review and his application, the Applicant formally contests the decision to exclude him from the recruitment process for the reclassified posts of A/HRO, Grade 13, at the HR Office, LFO. More specifically, the Applicant contests the decision to open this competitive recruitment process only to the incumbents of the programme-funded HR Assistant posts and not to the incumbents of the project-funded HR Assistant posts.

23. Effective 1 November 2012, the Applicant was employed by the Agency on a project-funded fixed-term appointment, Grade 9, as HR Assistant “B” at the Nahr El-Bared Camp, Project Management Unit, LFO. Following the abolition of his post effective 28 February 2014, the Applicant was offered the post of HR Assistant “B”, Grade 9, at the HR Office, LFO. Effective 10 November 2014, the Applicant was appointed, on a project-funded fixed-term appointment, to the post of “HR Associate A-REC” at the HR Career Management Division, Grade 12. The Applicant was assigned to handle all recruitment matters under OD 29 as part of the two-member OD 29 Unit team.
24. It is clear from the Respondent’s submissions that more than 500 contracts under OD 29 modality have been converted into the fixed-term project-funded posts. Accordingly, within the context of the revision of the HR structure, the Agency decided to integrate the duties of the OD 29 Unit team into the existing core structure of the HR Department. Subsequently, effective 1 July 2017, the Applicant’s post was reclassified to HR Assistant “B”, Grade 9, Step 11, with salary protection. In this respect, the Applicant claims that the reclassification of his post was not properly justified by the Agency. However, as clarified by the Respondent’s submissions, this decision was, in fact, a natural consequence of the revision of the HR Department’s structure, and the Respondent provided all the necessary evidence with respect to this restructuring exercise.

25. The Applicant further contends that, shortly after he had been downgraded from Grade 12 to Grade 9, three new posts of A/HRO, Grade 13, were created, and he was specifically excluded from the recruitment process. In this regard, by email dated 29 September 2017, entitled “Competition and upgrade to Associate HR Officer – implementation plan” sent to all staff members at the HR Department, LFO, the H/FHRO noted, in relevant parts, as follows:

1. As we have 14 HR Assistant programme budget posts among which three will be upgraded, and as all these posts are filled, we will have to perform an internal competitive process to select three posts and their incumbents. We will be unable to include in that competition other HR Assistant or clerical posts as they are project funded and are not part of the permanent structure of the department. Incumbents who are absent with lien to their post or temporary seconded to other departments, will be eligible to apply.

2. Programme funded HR Assistants will be invited to apply for the HR Associate Officer post and to submit their P11 and motivation letter.

26. Accordingly, the Agency decided to perform an internal competitive process, including only the incumbents of the programme-funded HR Assistant posts, for the reclassified posts of A/HRO, Grade 13. In this regard, the Applicant contends that his exclusion from the recruitment process was an act of discrimination.
27. The United Nations Appeal Tribunal ("UNAT") held in Simmons 2016-UNAT-624, as follows:

12. The jurisprudence of the Appeals Tribunal has been that the Administration has the power to restructure and reorganize its units and its departments to lend to greater efficiency. It is therefore not within the remit of the UNDT to pronounce on the exercise of this discretion, as in this case, to determine whether or not rostered candidates should be considered and other internal management issues. *This can only be done if there is evidence before the Dispute Tribunal of arbitrary and unlawful exercise of the discretion* [emphasis added].

28. In accordance with this jurisprudence, given the Applicant’s serious allegations in the present case, the Tribunal must review whether the Agency’s decision to open the selection process for the posts of A/HRO only to the incumbents of the programme-funded HR Assistant posts was arbitrary and unlawful exercise of discretion.

29. In Simmons, the UNAT found no evidence of arbitrary and unlawful exercise of discretion with respect to the cancellation of the vacancy announcement for a post and the subsequent decision to fill that post with a lateral transfer of another staff member. Similarly, in Sarieddine 2018-UNAT-852, the UNAT affirmed the Judgment of this Tribunal where the Tribunal had found no evidence of arbitrary and unlawful exercise of discretion regarding the lateral transfer of a staff member to a post for which Mr. Sarieddine had been ranked higher than the transferred staff member on the roster.

30. In the present case, the Tribunal understands the frustration of the Applicant. Not only was his post recently downgraded from Grade 12 to Grade 9, but also the Applicant was deprived of a promotion opportunity within the department in which he worked. Nevertheless, the Tribunal notes that the Applicant was downgraded with salary protection. Furthermore, the Applicant was treated equally with the other incumbents of the project-funded HR Assistant posts.

31. Consequently, in light of the Respondent’s submissions in the case record, as well as the UNAT’s jurisprudence, the Tribunal finds no evidence of arbitrary and unlawful exercise of discretion in the Agency’s decision to open the selection
process for the posts of A/HRO only to the incumbents of the programme-funded HR Assistant posts.

32. It follows from all of the foregoing that the Applicant has failed to sustain the burden of proof required to establish that the impugned decision was exercised arbitrarily or capriciously, motivated by prejudice or extraneous factors or flawed by procedural irregularity or error of law.

Conclusion

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

The application is dismissed.

(signed)

Judge Jean-François Cousin

Dated this 10th day of February 2019

Entered in the Register on this 10th day of February 2019

(signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman