TAHHAN

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 Suha Ihsan Tahhan (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 B, Grade 10, at the Relief and Social Services Department, West Bank Field Office.

Facts

2. Effective 1 December 2010, the Applicant was employed by the Agency on a Limited Duration Contract (“LDC”), Band D Q1, as Administrative Assistant in the West Bank Field Office (“WBFO”).

3. After several extensions, effective 2 September 2013, the Applicant was appointed on a fixed-term appointment as Senior Clerk, Grade 8, at the Relief and Social Services Department (“RSSD”), WBFO. This is the Applicant’s current post.

4. The Agency internally published a vacancy announcement for the post of Administrative Assistant B, Grade 10, at the RSSD, WBFO. The deadline for applying was 11 August 2017.

5. The Agency received 16 applications from internal candidates, including the Applicant. Ten candidates, including the Applicant, were shortlisted and invited for a written test on 24 August 2017. Thereafter, the Applicant and four other candidates were invited for a personal interview on 28 September 2017.

6. The Interview Panel (the “Panel”) concluded that the Applicant and two other candidates met the requirements for the post and recommended the first-ranked candidate for the post and shortlisted two other candidates for similar future vacancies. The Applicant was the second-ranked candidate.

7. On 11 November 2017, the Director of UNRWA Operations, WBFO (“DUO/WB”) approved the appointment of the first-ranked candidate.
8. By email dated 20 November 2017, the Applicant was informed that she was not selected for the post of Administrative Assistant B and that she was placed on a roster of pre-approved candidates for potential consideration by the DUO/WB for similar vacancies that would occur in the following 12 months.

9. On 23 November 2017, the Applicant requested review of the decision not to select her for the post of Administrative Assistant B. On 18 December 2017, the DUO/WB affirmed the decision.

10. On 13 February 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 15 February 2018.

11. On 16 March 2018, 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 18 March 2018.


13. On 7 May 2018, the Respondent’s filed his reply. The reply was transmitted to the Applicant on 8 May 2018.

14. On 21 May 2018, the Respondent filed a motion for extension of time to translate his reply. The motion was transmitted to the Applicant on 22 May 2018.

15. By Order No. 095 (UNRWA/DT/2018) dated 3 June 2018, the Tribunal granted the Respondent’s request.

16. On 20 June 2018, the Respondent submitted the Arabic translation of his reply. The Arabic translation of the reply was transmitted to the Applicant on the same day.

**Applicant’s contentions**

17. The Applicant contends:
i) Her lengthy experience as an Administrative Assistant was not taken into account, and the interview lasted less than one-half hour;

ii) She was very anxious during the interview because her one-month old son was in the car with her sister and was waiting to be breastfed. The Panel was aware of her situation, and when she asked to go to breastfeed her son and then return to the interview, the Panel members told her that they were finished with their questions;

iii) Asking her a question about the REACH system in the interview was discriminatory because the Panel members knew that she was not entirely competent to use the REACH system; and

iv) The Panel was biased towards the selected candidate.

18. The Applicant requests the rescission of the impugned decision.

**Respondent’s contentions**

19. 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-ranked candidate was reasonable;

iii) The selected candidate accomplished the highest score in the written test;

iv) The Panel found that the selected candidate’s overall performance in the interview was better than the Applicant’s performance;

v) The final ranking was done on the basis of the results of the written test and the interview scores;
vi) The familiarity with the REACH system was not the main criterion for selecting the first-ranked candidate and for not choosing the Applicant for the post;

vii) The competency of technical knowledge was assessed against a variety of criteria and familiarity with the REACH system was only one of them;

viii) It is clear from the Panel’s Interview Recruitment Report that the Applicant’s pertinent and lengthy experience was taken into account;

ix) The Applicant did not provide any evidence with respect to her allegation that the Agency intended to select the other candidate;

x) The Applicant has failed to sustain the burden of proof required to establish by convincing evidence that the decision not to select her for the post of Administrative Assistant B was exercised arbitrarily or capriciously, was motivated by prejudice or extraneous factors or was flawed by procedural irregularity or error of law; and

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

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

Considerations

21. The Applicant contests the decision not to select her for the post of Administrative Assistant B, Grade 10, at the RSSD, WBFO.

22. The Agency received 16 applications from internal candidates, including the Applicant. Ten candidates, including the Applicant, were shortlisted and invited for a written test on 24 August 2017. Thereafter, the Applicant and four other candidates were invited for a personal interview on 28 September 2017.

23. The Panel concluded that the Applicant and two other candidates met the requirements for the post and recommended the first-ranked candidate for the post and shortlisted two other candidates for similar future vacancies. The Applicant was
the second-ranked candidate. On 11 November 2017, the DUO/WB approved the appointment of the first-ranked candidate. By email dated 20 November 2017, the Applicant was informed that she was not selected for the post of Administrative Assistant B and that she was placed on a roster of pre-approved candidates for potential consideration by the DUO/WB for similar vacancies that would occur in the following 12 months.

24. The Applicant claims that her lengthy experience as an Administrative Assistant was not entirely taken into account. However, with regard to the Applicant, the Interview Recruitment Report clearly states as follows: “She also has very relevant experience for this position, because she worked as an [Administrative Assistant] for many years before moving to another job.” Therefore, this contention of the Applicant is without merit.

25. The Applicant further contends that asking her a question about the REACH system during the interview was discriminatory because the Panel members knew that she was not entirely competent to use the REACH system. However, the Tribunal notes that it is clear from the Interview Recruitment Report that this question was asked to the Applicant with respect to the competency of “technical knowledge” and that the Applicant was evaluated for this competency as “exceeds the job requirements.” Therefore, this contention of the Applicant is also without merit.

26. The Applicant also adds that she was very anxious during the interview because her one-month old son was in the car with her sister and was waiting to be breastfed. In this regard, the Tribunal can only state that it will not lightly interfere with decisions of an interview panel that pertain to scheduling and other logistical matters and that any personal concerns of a particular candidate during the course of an interview should be worked out between the candidate and Recruitment Officer in advance of an interview. There is no evidence that, in the present case, the Panel’s decision to conclude the interview was motivated by bias against the Applicant.

27. Lastly, the Tribunal considers that the DUO/WB 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.

28. 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 B was exercised arbitrarily or capriciously, was motivated by prejudice or extraneous factors or was flawed by procedural irregularity or error of law. Rather, the Interview Recruitment Report clearly shows that the Applicant’s candidacy for the post was given a full and fair consideration.
Conclusion

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

The application is dismissed.

Signed

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Judge Jean-François Cousin

Dated this 6th day of March 2019

 Entered in the Register on this 6th day of March 2019

Signed

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Laurie McNabb, Registrar, UNRWA DT, Amman