MAHMOUD

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 Raghda Mahmoud (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 Chief Teaching and Learning Division, Headquarters, Amman.

**Facts**

2. Effective 19 September 2007, the Applicant was employed by the Agency on a fixed-term appointment, Grade 15, as General Education Specialist, Education Administration and Supervision at the Headquarters in Amman, (“HQA”).

3. Effective 1 December 2011, the Applicant’s post was reclassified to the post of Teacher Development and School Empowerment Advisor, Grade 16.

4. Effective 1 March 2012, the Applicant was promoted to the post of Head, Teacher Development and School Empowerment Unit, Grade 18, Step 3.

5. On 11 October 2016, the Applicant was informed that the Department of Internal Oversight Services was conducting an investigation into allegations that she might have engaged in misconduct. This investigation was registered under Case No. INV-15-0268.

6. On 1 June 2017, the Agency published, internally and externally, a vacancy announcement for the post of Chief Teaching and Learning Division (“CT&LD”), HQA, Grade 20.

7. On 12 June 2017, the Officer-in-Charge, Department of Human Resources, informed the Applicant that the Director of Human Resources had decided not to impose any disciplinary measure on her regarding the investigation registered under Case No. INV-15-0268.

8. The Agency received 76 applications for the above-mentioned vacancy announcement, including the Applicant’s. Five candidates, including the Applicant, were shortlisted and invited for a written test on 24 July 2017. Thereafter, the
Applicant and two other candidates were invited for a personal interview on 24 August 2017.

9. On 24 August 2017, the Applicant was interviewed by the Interview Panel (the “Panel”) comprised of the Director of Education Department (“DED”), the Deputy Director of Education Department (“D/DED”), the Deputy Director of Planning Department, the Deputy Director of UNRWA Operations (Programmes), Jordan and Acting, Human Resources Officer, Recruitment as *ex-officio* member.

10. The Panel unanimously recommended one of the other two candidates to be appointed to the post of CT&LD. The Panel also concluded that the Applicant met the requirements of the post and recommended that she be the second ranked candidate should the first ranked candidate decline the offer.

11. Effective 19 September 2017, the Applicant’s appointment was converted to an “A” category temporary indefinite appointment.

12. On 12 October 2017, the Commissioner-General approved the appointment of the first recommended candidate.

13. By letter dated 16 October 2017, the Applicant was informed of the outcome of the recruitment process for the post of CT&LD.

14. On 29 October 2017, the Applicant submitted a request for decision review. By letter dated 7 December 2017, the Deputy Commissioner-General affirmed the decision.

15. On 30 January 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 31 January 2018.

16. On 1 March 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 5 March 2018.

17. On 26 March 2018, the Applicant filed a “Motion for Leave to Submit Observations and Supplementary Evidence on the Reply of the Respondent”. The motion was transmitted to the Respondent on the same day.
18. By Order No. 066 (UNRWA/DT/2018) dated 9 April 2018, the Tribunal granted the Applicant’s motion.

19. On 22 April 2018, the Applicant filed her observations and supplementary Evidence on the Respondent’s reply. This was transmitted to the Respondent on 23 April 2018.

Applicant’s contentions

20. The Applicant contends:

   i) During the past nine years, she has always been evaluated as “best performer” in her performance evaluations;

   ii) In June 2015, she requested the DED to upgrade her post to Grade 20, in accordance with the scope of her work;

   iii) In January 2017, the DED insulted and verbally attacked her in front of her colleagues during a workshop, and, a few days later, she faced a critical health situation resulted in a miscarriage;

   iv) The Agency violated paragraphs 24 and 34 of Module 4 of the Agency’s Area Staff Selection Guidelines (“the Guidelines”);

   v) The Agency violated the provisions of Area Staff Personnel Directive A/4/PartII/Rev.7/SectionI on Area Staff Selection Policy, effective 1 July 2009 (“PD/A/4”), with respect to the composition of the Panel;

   vi) During the interview, the Panel asked her questions that differed from the questions asked of the other candidates; there were technical problems during her Skype interview; she was not evaluated fairly, as the Panel had been misled by the DED; and the outcome of the interview was based on the Panel’s “feelings”;

   vii) In the interview, she was unlawfully assessed on a criterion that had not been specified in the vacancy announcement; strategic leadership was not one of the five competencies specified in the vacancy announcement;
viii) She has more qualifications and more experience than the selected candidate; and

ix) She was, in fact, not selected as a result of her statements during the investigation registered under Case No. INV-15-0268.

21. The Applicant requests:

i) Rescission of the impugned decision;

ii) To be reinstated to her post;

iii) To be compensated for the moral damages that she suffered; and

iv) To be compensated for the additional duties that she performed between February 2012 and June 2017.

Respondent’s contentions

22. The Respondent contends:

i) The selection process for the post of CT&LD was properly effected; the Applicant’s candidacy was given a full and fair consideration;

ii) The decision to recommend the Applicant as the second recommended candidate was based on the Panel’s unanimous conclusion;

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

iv) The fact that the Applicant was found suitable belies the allegations of bias;

v) The Applicant only submitted a complaint of prohibited conduct on 12 November 2017, i.e., after she had been informed of the outcome of the selection process;
vi) The written test results were not considered in the final determination of the successful candidates;

vii) The Applicant did not provide any evidence with respect to her allegation that she was asked questions that differed from what was documented in the Recruitment Report; and

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

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

Considerations

24. The Applicant contests the decision not to select her for the post of CT&LD. The Applicant and two other candidates had been invited for a personal interview. The Panel unanimously recommended one of the other two candidates to be appointed to the post of CT&LD. The Panel also concluded that the Applicant met the requirements of the post and recommended that she be the second ranked candidate should the first ranked candidate decline the offer.

25. First of all, the Applicant claims that, with respect to the composition of the Panel, the Agency violated the provisions of PD/A/4. Specifically, she asserts that the presence of the DED and the D/DED in the Panel was against the Agency’s regulatory framework.

26. In this respect, paragraph 69 of PD/A/4 on composition of interview panels reads as follows:

69. Interview panels must consist of at least three and normally up to five members, and must include at least one representative of the Recruitment Administrator and one from the Hiring Department. In the case of Programme or Support Department positions in the Field, the Field Director should ensure appropriate representation for the relevant Programme or Support Department. The representative of the Recruitment Administrator will be a voting member. The interview panel must consist of male and female members. The grade level of panel members should normally be congruent with the seniority
of the post under recruitment. All interview panel members should normally have been appropriately trained in competency-based interviewing techniques, including gender and diversity-sensitive recruitment practices. Hiring Directors will be responsible for identifying all staff in their Field/Department who will be involved in interview panels and ensuring that they receive the necessary training.

27. It is clear from this provision that there is nothing precluding the presence of two staff members from the hiring department to be on the Panel. In addition, given the aforementioned composition of the Panel, it is clear that the Panel, in the present case, consisted of five members and included at least one representative of the recruitment administrator and one from the hiring department in accordance with the above provision. Therefore, this contention of the Applicant has no merit.

28. Secondly, the Applicant contends that the Agency violated paragraphs 24 and 34 of Module 4 of the Guidelines, which provide certain instructions and suggestions with respect to the grading of the written test. However, as the Respondent has clarified, the written test was organised to support the shortlisting process. The results of the written test were not taken into consideration in the final decision between the Applicant and the successful candidate. Furthermore, it is clear from the Recruitment Report that the suitability of the candidates was based on their performance during the interview.

29. Thirdly, the Applicant claims that, during the interview, the Panel asked her questions that differed from the questions asked of the other candidates. The Respondent maintains that all of the candidates were asked the same questions, save in situations of follow-up questions. In this regard, the Tribunal considers that the Applicant’s claims remain a mere allegation without the support of any evidence.

30. Fourthly, the Applicant alleges that some of the Panel members, especially the DED, were biased against her because of statements that she made during the investigation registered under Case No. INV-15-0268. In this respect, the Tribunal agrees with the Respondent that the fact that the Applicant was found suitable belies any allegation of bias. Furthermore, these claims of discrimination and retaliation are without merit, as the Applicant failed to produce any evidence in support of thereof, other than allegations in her application, which were not substantiated or
corroborated. Lastly, 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.

31. In view of all the foregoing, the Tribunal holds 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 the CT&LD was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.
Conclusion

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

The application is dismissed.

SIGNED

Judge Jean-François Cousin

Dated this 26th day of March 2019

Entered in the Register on this 26th day of March 2019

SIGNED

Laurie McNabb, Registrar, UNRWA DT, Amman