KANAN

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 Arfeh Kanan (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 announce the vacancy of the posts of “School Counselor Focal Point - Technical Supervisor” at the Lebanon Field Office.

Facts

2. Effective 24 November 1988, the Applicant was appointed as Teacher ‘D’, Grade 6, Step 5, at Yabad Elementary School, Sabra, Central Lebanon Area (“CLA”) under a Temporary Indefinite Appointment.

3. Effective 1 July 1997, the Applicant was re-assigned as School Counsellor, Grade 10, Step 3, at Jaloud Preparatory Girls’ School, B/Barajneh, CLA. In 2003, she was reassigned under the same role to Haifa Preparatory Girls’ School, Sabra, CLA. This is the Applicant’s current post.

4. On 9 November 2017, the Director of UNRWA Affairs/Lebanon Field Office (“DUA/L”) sent a memorandum to the Director of Human Resources in which he requested payment of an additional assignment allowance to four UNRWA school counsellors, including the Applicant, because they had been requested to provide needed support to newly hired school counsellors. The special allowance was requested for 11 months, effective 1 November 2017. The Applicant was paid the requested special allowance.

5. On 10 September 2018, the Agency released an internal vacancy announcement for five “School Counselor Focal Point – Technical Supervisor” positions. All school counsellors in the CLA were invited to apply. The Applicant did not apply.

6. On 17 September 2018, the Applicant requested review of the decision to announce a vacancy for the positions of “School Counselor Focal Point – Technical Supervisor”. The Applicant did not receive a response.
7. On 26 November 2018, a recruitment report was issued and thereafter the DUA/L approved the recommendation to appoint five selected school counsellors to the advertised positions.

8. On 21 October 2018, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 28 October 2018.

9. On 26 November 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 Tribunal’s Rules of Procedure (“Rules”). The motion was transmitted to the Applicant on 27 November 2018.


11. On 18 January 2019, the Respondent filed his reply. It was transmitted to the Applicant on 21 January 2019.

12. On 11 February 2019, the Applicant filed a “Motion for Leave to Submit Observations and Supplementary Evidence on the Reply of the Respondent”, which included the Applicant’s observations. The motion was transmitted to the Respondent on 12 February 2019.

13. On 21 March 2019, the Respondent filed a motion to file comments on the Applicant’s observations. The motion was transmitted to the Applicant on 24 March 2019.

14. By Order No. 072 (UNRWA/A/DT/2018) dated 7 April 2019, the Tribunal granted the Respondent’s motion to file comments.

15. On 10 April 2019, the Respondent submitted comments on the Applicant’s observations which were transmitted to the Applicant on the same day.

16. On 4 May 2019, the Applicant submitted a “Reply to the Respondent’s Comments” without requesting leave from the Tribunal. This was transmitted to the Respondent on 5 May 2019.
Applicant’s contentions

17. The Applicant contends:

i) She should have been directly appointed to the “School Counselor Focal Point – Technical Supervisor” post because she had been performing the functions listed in the vacancy announcement for 21 years, including working in multiple area schools and providing supervision; the advertised post was merely a change in title without a change in job description or tasks;

ii) She had worked as a “Focal Point” for the previous year and was paid an allowance for doing so; and

iii) It was illogical for the Agency to announce a post and require her to “apply and be equal to” school counsellors with less experience, some of whom she had trained.

18. The Applicant requests that the announcement be treated as a change in title and that she be directly appointed to the post.

Respondent’s contentions

19. The Respondent contends:

i) None of the Applicant’s assertions have merit; she has not been performing the duties and responsibilities of the advertised post for 21 years; in particular, she has not been performing supervisory roles;

ii) The Applicant’s previous designation as focal point was only temporary; and

iii) The Agency’s decision to advertise the “School Counselor Focal Point – Technical Supervisor” post for competitive recruitment was proper.

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

Preliminary Issue

21. As will be set out below, the Tribunal finds that the application is not receivable. Therefore, it is not in the interests of justice to grant the Applicant’s motion to submit supplementary evidence.

Receivability

22. The Applicant contests the Agency’s decision to announce the vacancy of the posts of “School Counselor Focal Point - Technical Supervisor” at the Lebanon Field Office (“LFO”).

23. The Tribunal notes that as of 1 July 1997, the Applicant held the post of “School Counsellor” with the Agency. At the time the Applicant assumed this position, UNRWA school counsellors were assigned to multiple schools and were responsible for coordinating and providing guidance and training for teacher-counsellors at the assigned schools, as well as providing individual counselling for some pupils.

24. In 2017, there was an increase in the number of school counsellor posts. This increase resulted in the assignment of one school counsellor for most of the UNRWA schools in Lebanon. Four senior school counsellors, including the Applicant, were requested to provide support for the newly hired school counsellors, in addition to their regular duties. To compensate for these additional duties, they were paid a Special Post Allowance for 11 months.

25. In September 2018, the Agency announced that five school counsellor focal points/technical supervisors would be selected for the upcoming school year. It explained that:

In order to provide support and technical supervision to all school counselors in the schools (Area) and to follow-up the referral needs of the Area, these 5 posts will be fully released from their duties as school counselor for the duration of the project. Due to this change, new Terms of Reference were developed (drafted) to formalize this assignment.
An internal vacancy announcement was issued for five acting appointments, each for 11 months with the possibility of extension, for “School Counselor Focal Point – Technical Supervisor”. It is this vacancy announcement that the Applicant contests.

26. The UNAT, in Hamad 2012-UNAT-269, paragraph 23, confirmed that an administrative decision is defined as:

[…] a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry legal consequences. [ Former Administrative Tribunal Judgment, No. 1157, Andronov (2003) V.]

27. The Tribunal recalls that in Ishak 2011-UNAT-152, the UNAT held in paragraph 29 that “[a] selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal”. The decision to advertise the vacancy of the “School Counselor Focal Point – Technical Supervisor” posts was the first step towards a final decision which was the appointment of staff members on these posts. By itself this preparatory decision cannot have direct consequences on the contract of a staff member. The vacancy announcement, therefore, is not an administrative decision.

28. Moreover, the Tribunal notes that the Applicant did not apply for the advertised “School Counselor Focal Point – Technical Supervisor” posts. She has no standing to contest the outcome of the selection process for which she was not a candidate.

29. Finally, while the Tribunal notes that the Agency’s decision to create the “School Counselor Focal Point – Technical Supervisor” posts resulted in the Applicant losing the special allowance she had been paid for performing additional duties, the Applicant did not contest the decision to cut this allowance.
30. For the foregoing reasons the application is not receivable.

Conclusion

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

The application is dismissed.

Judge Jean-François Cousin  
Dated this 19th day of June 2019

Entered in the Register on this 19th day of June 2019

Laurie McNabb, Registrar, UNRWA DT, Amman