Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

FAYYOUMI

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 Khalil Fayyoumi (“Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (“Respondent”), not to promote him from the rank of Associate Professor to Professor in the Faculty of Educational Sciences and Arts (“FESA”).

Facts

2. Effective 1 November 1981, the Applicant was employed by the Agency on a temporary indefinite appointment, Grade 6, Step 1, as Teacher in Amman Area, Jordan Field Office (“JFO”). At the time material to the present application, the Applicant occupied the post of Associate Professor, Grade 15, at the FESA.

3. On 10 July 2017, the Applicant requested to be promoted from Associate Professor to Professor in the specialization of “Curriculum and Methods of Teaching Arabic Language”.

4. On 16 August 2017, during the review of the Applicant’s promotion request, it was found that three of the research articles submitted in support of his request had already been submitted with the Applicant’s request for promotion from Assistant Professor to Associate Professor in 2012.

5. On 25 September 2017, the Dean of the FESA denied the Applicant’s promotion request. The Dean also informed him that because of the irregularity in his submission, he would not be allowed to submit another request for promotion for the next six months.

6. In a document dated 22 March 2018, the Applicant made another request for promotion.

7. On 17 April 2018, the Faculty Council recommended to proceed with the review of the Applicant’s request for promotion. The next step in the process was that reviewers were appointed to conduct the review. The reviewers then
submitted their reports to the Promotion Committee, which made the final decision on the promotion.

8. Effective 13 November 2018, the Applicant retired from the Agency, as he reached the age of mandatory retirement.

9. On 23 December 2018, after reviewing the reviewers’ reports, the Promotion Committee did not recommend the Applicant’s promotion for the reason that two of his research articles were of substantially similar content. The Applicant was orally informed that he did not fulfil the promotion requirements.

10. On 6 January 2019, the Applicant submitted a request for decision review.

11. On 3 February 2019, the present application was filed with the UNRWA Dispute Tribunal ("Tribunal"). The application was transmitted to the Respondent on 4 February 2019.

12. On 6 March 2019, the Respondent filed a motion for an extension of time to file his reply. The motion was transmitted to the Applicant on 7 March 2019.

13. By Order No. 057 (UNRWA/DT/2019) dated 18 March 2019, the Tribunal granted the Respondent’s motion for an extension of time to file his reply.

14. On 2 April 2019, the Respondent filed his reply. The Respondent’s reply was transmitted to the Applicant on 3 April 2019.

15. On 9 April 2019, the Applicant filed his observations on the Respondent’s reply without requesting leave of the Tribunal. Following the Registrar’s instructions, on 11 April 2019, the Applicant filed his observations on a motion form, again without requesting leave of the Tribunal. The Applicant’s submissions were transmitted to the Respondent on the same day. The Tribunal accepted the Applicant’s submissions into the case record.

16. On 16 April 2019, the Respondent filed a motion for an extension of time to translate his reply. The motion was transmitted to the Applicant on the same day.
17. By Order No. 093 dated (UNRWA/DT/2019) dated 29 April 2019, the Tribunal granted the Respondent’s motion for an extension of time to translate his reply.

18. On 30 May 2019, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

19. On 1 June 2019, the Applicant filed additional observations on the Respondent’s reply without requesting leave of the Tribunal. Following the Registrar’s instructions, on 2 June 2019, the Applicant submitted his observations on a motion form, again without requesting leave of the Tribunal. The Applicant’s submissions were transmitted to the Respondent on 3 June 2019. The Tribunal accepted the Applicant’s submissions into the case record.

Applicant’s contentions

20. The Applicant contends:

   i) The Head of Grade Teacher Department (“HGTD”) was absent at the time the Promotion Committee reviewed his promotion request; the HGTD is a member of the Promotion Committee and his presence is obligatory;

   ii) The HGTD informed the Applicant that his “papers and the results of the evaluation were never opened”. The HGTD was not aware that the Promotion Committee had reviewed the Applicant’s submissions in his absence and without informing him;

   iii) The members of the Promotion Committee agreed to hold a meeting on 31 December 2018, in order to discuss the reviewers’ reports in the presence of all members; however, this meeting never took place; and

   iv) He was not informed in writing of the result of his promotion request.

21. The Applicant requests:

   i) The Agency to examine the results of the reviewers’ reports; and
ii) To be promoted.

**Respondent’s contentions**

22. The Respondent contends:

i) The decision not to promote the Applicant was properly effected;

ii) The Applicant’s second promotion request was rejected because he had presented two research articles that were of materially similar content and were issued in two journals under different titles; therefore, the Applicant violated the ethical standards of the FESA members;

iii) The HGTD attended the portion of the Promotion Committee’s meeting in which the Applicant’s request was discussed and a decision was reached;

iv) The Applicant’s promotion requests were considered in accordance with the Agency’s Rules and Regulations; the review of the research articles submitted by the Applicant was conducted by external reviewers;

v) The promotion request of the Applicant was duly reviewed and decided upon at the Promotion Committee’s meeting on 23 December 2018; therefore, there was no need to hold another meeting on 31 December 2018;

vi) The Applicant’s allegations are unsubstantiated; and

vii) 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 promote him from Associate Professor to Professor in the FESA.
25. On 25 September 2017, the Dean of the FESA informed the Applicant that his first request for promotion was rejected because three of his research articles had already been submitted with his request for promotion from Assistant Professor to Associate Professor in 2012. Due to this irregularity, the Applicant was barred from submitting another promotion request for six months.

26. The Applicant has never contested this decision before the Tribunal. Therefore, the only decision contested by the Applicant is the decision not to promote him from Associate Professor to Professor following his second request dated 22 March 2018.

27. The “Education Technical Instruction No. 1/2018” (“ETI No. 1/2018”), in relevant part, stipulates:

J. GENERAL ACADEMIC PROMOTION CONDITIONS

Article 3: For a faculty member to be eligible for promotion to a higher rank, he/she shall:

3. Be successful in teaching;
4. Have good work relationship with colleagues;
5. Be active in community service and development efforts;
6. Have valuable scholarly publications in respective academic fields – published or accepted for publication, while in current rank;
7. Have at least 60% (evaluated by points) of the works submitted for promotion in the applicant’s accurate field of specialization;
8. Have actually published scholarly works (evaluated by points), which are equivalent to at least half of the academic production required for promotion; and not have been served with a letter of censure or more stringent penalty during the last two years. If such a penalty has been enforced, consideration of the promotion procedures shall be postponed for a period to be determined by the Promotion Committee; such deferment shall not be less than six months.

28. The Applicant raises irregularities in the formal review process of his promotion request. He claims that, contrary to the ETI No. 1/2018, the HGTD did not attend the portion of Promotion Committee’s meeting in which his research articles were reviewed. However, it appears from the “Report on the Promotion of Dr. Khalil Al Fayyoumi from the Rank of Associate Professor to Professor” (“Report”), which is annexed to the Respondent’s reply, that the HGTD did, in
fact, attend the meeting in which the Applicant’s promotion was discussed. Thus, the Applicant’s allegation in this regard is without merit.

29. The Applicant also alleges that his research articles were not reviewed. Contrary to the Applicant’s allegations, it is clear from the case file that the Report was issued on 23 December 2018, and that the Applicant’s research articles had been reviewed by the external reviewers and the Promotion Committee. The Tribunal further notes that the Applicant has failed to provide any evidence in support of his contention. Therefore, this allegation is also without merit.

30. The Applicant further contests that he was never informed of the outcome of his promotion request. The Respondent alleges that the Applicant was orally informed that his request for promotion was denied. The Applicant asserts in his observations on the Respondent’s reply that he was not informed of the results, neither orally nor in writing. The Tribunal finds that this assertion is without merit, as the Applicant submitted a request for decision review 14 days after the decision was made. However, assuming arguendo that the Applicant was not formally informed of the outcome of his request for promotion, the Tribunal notes that any delay in informing him of the results of his request for promotion, unfortunate as it was, did not have any impact on the outcome of the decision not to promote him. Nor did any delay affect the Applicant’s ability to file an application with the Tribunal.

31. Finally, the Applicant questions the motives of the decision not to promote him. It is not contested that his second request for promotion was rejected because he had submitted two research articles of similar content under two different titles. The Report issued on 23 December 2018 determined that:

[I]t can be observed from these two researches that:
Both of them are identical, despite the differences in the formation of their titles.
The institution to which the researcher affiliate, as mentioned in both researches, is Department Curricula and Teaching Methods, FESA, University of Jordan, located in Al-Muqabalyn, Amman, Jordan.
It is worth mentioning that promotion requests submitted by any staff member shall include a pledge stating that the researches submitted for the present promotion had not been submitted for any previous promotion purposes. All the above-mentioned are violation of the ethical standards that a university faculty member shall have.

32. The Applicant contests the Promotion Committee’s evaluation of his research articles. In this respect, it is not the function of the Tribunal to substitute its own decision for that of the Agency. As the United Nations Appeals Tribunal (“UNAT”) stated in Sanwidi 2010-UNAT-084, paragraph 40:

[W]hen 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.

33. It follows from all of the foregoing that the Applicant has failed to sustain the burden of proof required to establish that the decision not to promote him to the rank of Professor was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law. Rather, the evidence clearly shows that the Applicant’s candidacy for promotion to the rank of Professor was given full and fair consideration.
Conclusion

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

The application is dismissed.

________________________________________
Judge Jean-François Cousin
Dated this 10th day of June 2020

Entered in the Register on this 10th day of June 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman