HAMZEH

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 Hatem Hamzeh (“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 shortlist him for the post of Area Education Officer (“AEO”), Syria Field Office (“SFO”).

Facts

2. Effective 15 September 2013, the Applicant was employed by the Agency on a fixed-term appointment, Level 6B, as Teacher, Mathematics at Damascus Area, SFO. At the time material to the present application, the Applicant occupied the post of Education Specialist, Grade 13.

3. On 22 July 2018, the Agency advertised a vacancy announcement for the post of AEO, Grade 17, at South Area, SFO. The Applicant applied for the post.

4. On 12 December 2018, the Agency re-advertised the vacancy announcement for the same post. The Applicant re-applied for the post.

5. The Agency received 52 applications. None of the candidates was placed in “Tranche 1”. Seven candidates, who partially met the requirements and could be considered on equivalency basis, were shortlisted as “Tranche 2” candidates. The Applicant was not shortlisted.

6. By email dated 2 February 2019, the Applicant inquired why he had not been invited to the written test. By letter dated 5 February 2019, the Head, Field Human Resources Office (“H/FHRO”) responded as follows:

   […] shortlisting for the subject post has been in line with the Agency current practice, to giving priority in shortlisting to the candidates from the same area in which the post is located. This practice was introduced as a response to the restrictions of movements due to the conflict in Syria. As you are not a resident of South area as indicated in your PHP, we regret that your application has not been shortlisted.
7. On 9 February 2019, the Applicant submitted a request for review of the decision not to shortlist him for the post of AEO.

8. On 4 April 2019, the present application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 8 April 2019.

9. On 8 May 2019, the Respondent filed a motion for an extension of time to file his reply. The motion was transmitted to the Applicant on the same day.

10. By Order No. 104 (UNRWA/DT/2019) dated 19 May 2019, the Tribunal granted the Respondent’s motion for an extension of time to file his reply.

11. On 14 June 2019, the Respondent filed his reply. The reply was transmitted to the Applicant on 16 June 2019.

12. On 28 June 2019, the Respondent filed a motion for an extension of time to translate his reply. The motion was transmitted to the Applicant on 30 June 2019.

13. By Order No. 138 (UNRWA/DT/2019) dated 10 July 2019, the Tribunal granted the Respondent’s motion for an extension of time to translate his reply.

14. On 30 August 2019, the Respondent filed a motion for a further extension of time to translate his reply. The motion was transmitted to the Applicant on 1 September 2019.

15. On 16 September 2019, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

**Applicant’s contentions**

16. The Applicant contends:

   i) There was no indication in the vacancy announcement that the candidates should be residents of the area where the post was located;

   ii) The vacancy announcement was posted on the Agency’s website for an entire region, not only for a specific area;
iii) One of the candidates, whose duty station was Jordan, was shortlisted;

iv) The South Area of Syria was a safe area, as announced by the Syrian Government;

v) As he applied twice for the same post, it is clear that he had an intention to reside in the area where the post was located; and

vi) The contested decision is contrary to the values and principles of the United Nations.

17. The Applicant requests:

   i) Rescission of the impugned decision; and

   ii) To be allowed to take a written test for the post of AEO.

**Respondent’s contentions**

18. The Respondent contends:

   i) The selection process for the post was properly effected, and the Applicant’s candidacy was given full and fair consideration;

   ii) The Commissioner-General has broad discretion in matters of staff selection;

   iii) The decision not to shortlist the Applicant was a discretionary decision;

   iv) The criteria applied by the Human Resources Field Office were specific, objectively set and measurable;

   v) Preference was given to the local candidates who were already based in the duty station of the post due to the movement restrictions resulting from the conflict in Syria and in accordance with relevant United Nations Department for Safety and Security (“UNDSS”) advisories for the South Area;
vi) The priority rule for local candidates was stipulated in both vacancy announcements;

vii) The Applicant does not contest the fact that, at the time material to the recruitment process, he was not based in the duty station of the post of AEO;

viii) The Applicant did not possess an advanced university degree, which was listed as a minimum requirement in the vacancy announcements;

ix) The Applicant failed to sustain the burden of proof required to establish that the decision not to shortlist him was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law; and

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

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

Considerations

20. The Applicant contests the decision not to shortlist him for the post of AEO, Grade 17, SFO.

21. Following the re-advertisement of the post of AEO, the Agency received 52 applications. Seven candidates were placed in “Tranche 2”. The Applicant was not shortlisted. He was informed by the H/FHRO that he had not been shortlisted, as priority had been given to the local candidates from the duty station where the post was located. As the duty station of the post of AEO was in South Area, and the Applicant was located in Damascus Area, he was not shortlisted.

22. At the outset, the Applicant claims that one of the candidates whose duty station was Jordan was shortlisted. The Respondent submitted to the Tribunal the Summary List of the Applicants for the post of AEO, which clearly demonstrates
that all seven shortlisted candidates were from the South Area of Syria. Consequently, the Applicant’s contention in this regard is dismissed.

23. The Applicant also alleges that the South Area of Syria was considered safe by the Syrian Government. However, the Respondent sustains that the Agency relied on the independent advice of the UNDSS and that the priority criterion was introduced due to the risk levels and restrictions of movement. The Applicant further claims that the priority rule for the local candidates was not mentioned in the vacancy of announcement of the post of AEO. Nevertheless, the re-advertised vacancy announcement clearly stated that preference would be given to local candidates who were already based in the duty station of the post. Therefore, the Applicant’s contentions are without merit.

24. With respect to the priority criterion for the establishment of the shortlist, the United Nations Appeals Tribunal (“UNAT”) held in El Madhoun 2019-UNAT-947, as follows:

13. […] Two steps must be distinguished in the selection process: firstly, the Agency examines all applications with the purpose to create a long-list including all the candidates who meet the requirements as described in the announcement; and secondly, the Agency short-lists a limited number that proceeds to the next step in the selection process.

14. Especially for the shaping of a short-list, the discretion of the Administration is broad even if, as mentioned above, not unfettered.

15. The short-listing must be based on objective and impersonal criteria and those criteria have to be free of allegations of bias, conflict of interest or discrimination.

16. The criteria mentioned in the vacancy announcement are minimum criteria established at a time when the Agency does not know how many candidates will apply and what their profile will be. Their purpose is to allow the Agency to make a long-list. The purpose of the short-list is to deepen the selection process and to select a limited number of candidates among those who satisfied the minimum criteria and were long-listed.

17. At the stage of the short-listing, it is therefore reasonable for the Agency to refer exclusively to some of the criteria
mentioned in the vacancy announcement or to pay attention to other distinctive features, insofar as they are reasonable in a given situation.

25. In accordance with the aforementioned jurisprudence, the Tribunal holds that, in the present case, the Agency exercised its discretion in creating a shortlist by referring exclusively to the priority rule for local candidates. The Tribunal considers that this criterion was reasonably established, given the movement restriction of South Area and the UNDSS advisories. The shortlisting was therefore based on an objective and impersonal criterion, free of allegations of bias, conflict of interest or discrimination.

26. It follows from all of the foregoing that, in the present case, the Applicant has failed to sustain the burden of proof required to establish that the decision not to shortlist him for the post of AEO was exercised arbitrarily or capriciously, motivated by prejudice or other extraneous factors or flawed by procedural irregularity or error of law. Rather, the evidence clearly shows that the Applicant’s candidacy for the post was given full and fair consideration and the Applicant was not shortlisted based on an objective and impersonal criterion, free of allegations of bias, conflict of interest or discrimination.
Conclusion

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

The application is dismissed.

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Judge Jean-François Cousin

Dated this 27th day of July 2020

Entered in the Register on this 27th day of July 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman