EL YOUSEF

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 May El Yousef (“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 select her for the post of Auditor “A”, Grade 17, Headquarters, Amman (“HQA”).

Facts

2. Effective 26 September 2011, the Applicant was employed by the Agency on a fixed-term appointment, Grade 15, Step 1, as Auditor “B” at the HQA. This is the Applicant’s current post.

3. On 6 March 2019, the Agency internally and externally advertised a vacancy announcement for the post of Auditor “A”, Grade 17, HQA.

4. The Agency received 95 applications for the post, nine of which were from internal candidates, including the Applicant. Five candidates, including the Applicant, were shortlisted for a written test.

5. Only one candidate who scored more than the minimum mark, 50 out of 100, in the written test was invited for a personal interview. Since the Applicant scored 45, she was not invited for an interview.

6. The Applicant was notified of the contested decision on 2 July 2019.

7. On 14 July 2019, the Applicant submitted a request for decision review.

8. On 11 September 2019, the present application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 12 September 2019.

9. On 18 September 2019, the Respondent filed his reply. The reply was transmitted to the Applicant on the same day.
10. On 26 September 2019, the Applicant filed a motion to submit observations on the Respondent’s reply. The Applicant’s motion was transmitted to the Respondent on the same day.

11. By Order No. 197 (UNRWA/DT/2019) dated 6 October 2019, the Tribunal granted the Applicant’s request to submit observations on the Respondent’s reply.

12. On 8 October 2019, the Applicant submitted her observations. The Applicant’s submission was transmitted to the Respondent on the same day.

**Applicant’s contentions**

13. The Applicant contends:

   i) She meets all qualifications and possesses relevant experience for the post;

   ii) She has been assigned as acting Auditor “A”;

   iii) The decision not to invite her to an interview was unlawful and biased; and

   iv) There is a discrepancy between the marks of the two correctors who evaluated her written test; she was given a score of 52 from the Corrector 1 and 38 from the Corrector 2.

14. The Applicant requests:

   i) To be informed of the success criteria of the staff member who passed the test and of the reason she did not pass the test; and

   ii) To be compensated for the damages caused to her career.

**Respondent’s contentions**

15. The Respondent contends:
i) The selection procedure was complied with and the Applicant’s candidacy was given full and fair consideration;

ii) Only the candidate scoring above the minimum mark in the written test was invited for the personal interview; the Applicant scored 45 points which fell short of minimum mark, 50 points; none of the candidates who scored less than 50 points were invited for an interview;

iii) The Applicant failed to prove that the decision not to select her was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law; and

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

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

Considerations

17. The Applicant contests the decision not to select her for the post of Auditor “A”. The Agency received 95 applications for the post. Five candidates, including the Applicant, were shortlisted for a written test. Only one candidate scored above the minimum mark, 50 out of 100, in the written test and was invited for a personal interview.

18. It is clear from the Recruitment Report that the Applicant was not invited for a personal interview because her final score was 45 out of 100 on the written test. Therefore, the Applicant did not meet the threshold of 50 to pass to the next stage of the recruitment process.

19. Area Staff Regulation 4.3 stipulates:

Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity.
20. Area Personnel Directive A/4/ Part II/ Rev 7/SectionII/Rev.8, in relevant parts, provides:

**PRINCIPLES**

1. All Limited Duration Contract (LDC) staffing activities carried out by the Agency will be guided by the following principles:

   […]

   Recruitment procedures that are streamlined while still remaining fair and transparent.

   Appointment of candidates with the highest standards of efficiency, competence, and integrity.

   Full delegation of authority for selection decisions by the Commissioner-General to Field Directors and Headquarters (HQ) Department/Programme Directors for LDC appointments at all levels.

**Testing**

26. Tests may be administered or waived as determined by the Hiring Director, and may either support the short-listing process or be conducted in conjunction with the personal interview (emphasis in original).

21. The Applicant claims that she has been occupying a post of Auditor “B” since 2011 and she possesses all qualifications and has relevant experience for the post of Auditor “A”. The Applicant’s qualifications are not contested by the Respondent. The Tribunal notes that the recruitment process was a competitive one and the minimum mark to be invited for a personal interview was 50 out of 100. Since the Applicant scored 45 in the written test, she was not invited for a personal interview. Therefore, the Applicant’s contention is dismissed.

22. The Applicant further submits that there was a discrepancy between the marks of the two correctors who evaluated the written test. She was given a score of 52 from the Corrector 1 and 38 from the Corrector 2. In this regard, it is clear from the Recruitment Report that another candidate was given a score of 37 from the Corrector 1 and 56 from the Corrector 2. Thus, another candidate was evaluated with a significant difference between the marks of the two correctors and, in the
Tribunal’s view, such differences are not unusual. Thus, the Applicant’s contention in this regard is also dismissed.

23. Consequently, the Tribunal considers that the decision not to invite the Applicant to a personal interview was properly effected, as she did not pass the minimum threshold of 50 points in the written test.

24. The Tribunal recalls that, in non-selection cases, the general principle is that all official acts are presumed to have been regularly performed. This is known as the presumption of regularity (Rolland 2011-UNAT-122, para. 26). However, this is a rebuttable presumption. The presumption stands satisfied if the Agency is able to minimally show that full and fair consideration was given to the candidate, and in that event, the burden of proof shifts to the applicant who must be able to show that he or she was denied a fair chance of promotion (Lemonnier 2017-UNAT-762, paras. 36-37).

25. It follows from the foregoing that the Applicant has failed to sustain the burden of proof required to establish that the decision not to select her for the post of Auditor “A” 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 the post was given full and fair consideration. Therefore the application must be dismissed.
Conclusion

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

The application is dismissed.

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Judge Jean-François Cousin

Dated this 12th day of August 2020

Entered in the Register on this 12th day of August 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman