UNRWA DISPUTE TRIBUNAL

Before: Judge Goolam Meeran
Registry: Amman
Registrar: Laurie McNabb

AL MOUED

v.

COMMISSIONER GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant: Diab Tabari

Counsel for Respondent: Anna Segall
Introduction

1. Moued Al Moued (the “Applicant”) filed an application contesting the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the “Respondent”) to declare his functions as Trades Instructor, Radio and Television Maintenance redundant and to deny his request to be transferred to the post of Recreation Officer.

Facts

2. On 27 September 2000 the Applicant commenced employment with the Agency as a Trades Instructor, Radio and Television Maintenance, Level 3B, at the Siblin Training Centre (“STC”), Lebanon Field Office (“LFO”). Through successive renewals of the initial two year fixed-term appointment, the Applicant’s appointment was extended through to 30 September 2013.

3. A report in March 2011 on the employability of graduates from the STC, prepared by the Planning and Strategy Office of the LFO as part of a wider review of the Agency’s Vocational Training Centres, recommended that the course in Audio-Visual Maintenance be discontinued given its “unpopularity” and the “marginal relation between training and employment.”

4. By letter dated 16 September 2011, Ms. Natalie Burton, the Field Human Resources Officer, Lebanon informed the Applicant of the decision to declare the post he occupied as redundant. The Applicant was additionally informed:

   Every effort will be made to reassign you to another post in the Field, for which you have the requisite qualification in accordance with Personnel Directive A/9, Rev. 6, para 14.4.

   Where the above cannot be achieved, you will be terminated, effective C.O.B. 15.12.2011, on grounds of Redundancy under S/R 109.9 para 3(B).

5. By memorandum to Ms. Burton dated 29 September 2011 and titled “Arbitrary Dismissal from Employment as Redundant Instructor of A.V.E.M.” the Applicant argued that the course he had taught was “one of the most important
trades and technologies” and suggested that the course had received a bad reputation due to the way it had been administered by the Agency.

6. By memorandum addressed to the Director of UNRWA Affairs, Lebanon (“DUA/L”) dated 28 November 2011, the Applicant listed four posts at the STC – Recreation Officer, Housemaster, Deputy Principal, and Registrar Assistant – and three other posts within the Agency – Administrative Assistant, Registrar at Beithjala School, and Head Teacher – as examples of posts he could be reassigned to.

7. By e-mail to Mr. Aref Abu-Khalil, Human Resources Services Officer, Lebanon dated 30 March 2012 the Applicant requested that he be appointed as a Recreation Officer at the STC.

8. By e-mail to Ms. Burton and the Deputy Director of UNWRA Affairs, Lebanon dated 12 April 2012, Mr. Abu-Khalil noted that he met the Applicant that day and informed him that: in order for the Agency to appoint him to a vacant post he needed to have sufficient skills and knowledge required to perform the job; he could sit the respective tests for the posts of Arabic teacher or Clerk; and he was not qualified for the post of Recreation Officer, which requires a University degree in physical education and four years relevant experience.

9. By letter to the Applicant dated 23 April 2012, Mr. Salvatore Lombardo, the DUA/L, reiterated that the Applicant was not qualified for the vacant position of Recreation Officer and noted that the Applicant had been offered the opportunity to sit technical evaluations for clerical positions and to be an Arabic teacher, which he had, up to that date, declined. The Applicant was advised to notify Human Resources as soon as possible should he reconsider his decision not to sit either of the technical evaluations. In the absence of such notification his employment would be terminated for reasons of redundancy with effect from close of business 31 May 2012.

10. By letter dated 13 August 2012, Ms. Burton advised the Applicant that the Agency was offering him a post of Clerk ‘B’ and that he was to indicate his preference between two listed schools at which he could take up the post.
11. In his reply, dated 30 August 2012, the Applicant reiterated his interest in the post of Recreation Officer without responding to the offer of a post as a Clerk ‘B’.

12. By e-mail dated 11 September 2012, the Applicant confirmed his receipt of the letter offering him a post as Clerk ‘B’ at one of two schools but stated that transfer to either of the two schools would “add additional burdens on my shoulder through paying for transport from and to home.”

13. By e-mail dated 12 September 2012, Ms. Burton asked the Applicant to confirm whether or not he would accept the offer, noting that if he chose not to accept, the Agency would have no other option but to declare him redundant.

14. The Applicant did not respond to that e-mail but on 14 September 2012, through a visit to Mr. Abu-Khalil from the Applicant’s sister, the Agency became aware that the Applicant had reported for duty at one of the schools at which he had been offered a post.

15. By letter dated 27 September 2012, Ms. Burton advised the Applicant of his new terms of employment, which included grade protection at Grade 8, Step 19.

16. By memorandum dated 16 October 2012 and addressed to the Officer-in-Charge, UNRWA Affairs, Lebanon, the Applicant requested review of the decision to transfer him to the post of Clerk ‘B’ and not to appoint him as Recreation Officer. The Applicant noted that his placement at Grade 8, Step 19 had resulted in a lower salary than that which he had previously collected.

17. By letter dated 15 November 2012, Ms. Ann Dismorr, the DUA/L, responded to the Applicant’s request for decision review, noting that the Applicant had been advised on numerous occasions that he was not qualified for the position of Recreation Officer. Ms. Dismorr found that all relevant Regulations, Rules and issuances had been complied with and that the Agency had exerted “reasonable effort” to find the Applicant a suitable post. Noting that the Applicant was gainfully employed with the Agency she advised him to apply
for any of the Agency’s vacancies should he be interested in moving from his current post as a Clerk ‘B’.

18. By application dated 27 December 2012, the Applicant appealed to the Tribunal, contesting the decision to declare his functions as Trades Instructor, Radio and Television Maintenance redundant and to deny his request to be transferred to the post of Recreation Officer. The Application was received by the Tribunal on 7 January 2013 and was transmitted to the Respondent on the same day.

19. On 6 February 2013, the Respondent submitted a motion for extension of time to file a reply.

20. On 7 February, the Tribunal granted the Respondent an extension of one week from the date of his motion.

21. On 13 February 2013, the Respondent filed his reply. The Reply was transmitted to the Applicant on 14 February 2013.

22. On 21 February 2013, the Applicant requested leave to submit a rejoinder to the Respondent’s Reply. The Tribunal granted the request.

23. On 28 February 2013, the Applicant filed his rejoinder to the Respondent’s Reply. The Rejoinder was transmitted to the Respondent on 3 March 2013. The Tribunal notes that the Applicant did not use the opportunity to make comments that would amount to an effective rebuttal of the legal and factual arguments and submissions put forward by the Respondent. However, amongst his criticisms of the process, and the decisions reached, he alleged that there had been prejudice against him by the “front office in Lebanon” and he reiterated his request that he be “offered the post of recreation officer with immediate effect.”

**Applicant’s contentions**

24. The Applicant contends that:

   (i) The findings of the Agency in relation to the Audio-Visual Maintenance course were not shared with the Applicant. If the
information was shared he could have proposed changes to the course. The lack of consultation makes the decision to cancel the course and the resulting consequences improper.

(ii) He was asked to move to a post as a Clerk ‘B’, which was a “quick decision” after a year of discussions back and forth. The decision came as a surprise to him and he cannot understand how it was made.

(iii) The first two offers to him were to take a post as an Arabic teacher or as a Clerk ‘B’. He does not have the required qualifications for either post and is not competent to carry out the assigned tasks.

(iv) The delay in finding him a suitable position and his overall treatment by the Agency is evidence of prejudice against him by the front office of the Lebanon Field Office.

(v) The post of Recreation Officer is closest to his qualifications and would be the most suitable for him. He has relevant experience that would enable him to carry out the role in a very professional manner.

(vi) For two years he has been frustrated, nervous, and insecure as a result of the “continuous surprises from the HR methods used.” This has caused “two years of continuous panic”.

(vii) His reassignment has resulted in a lower salary, lower pension contributions, and increased transport costs.

(viii) The response to his request for decision review by the DUA/L was a “mere rubber stamping on a letter prepared for her signature by her Deputy.” The DUA/L did not review his case and so the decision review was carried out by the same person that made the decision.

25. The Applicant requests the Tribunal to order that:

(i) he be offered the post of Recreation Officer with immediate effect;

(ii) he be paid “all [his] lost salary, Provident Fund and interest lost as a result of placing him at Grade 8, step 19”;

(iii) he be placed at Grade 11, Step 12 with salary protection, in addition to a step for every year lost; and

(iv) he be paid two years’ salary for moral damages as a result of frustration, tension and physical stress from commuting from Beirut and mental stress which he has suffered from being “down graded”.

Respondent’s contentions

26. The Respondent contends that:
(i) The review of the courses taught at the Agency’s Vocational Training Centres was necessitated by a bona fide need to improve the courses on offer to the students so as to better align them with the skills in demand in the local labour market. As a result of the review it was determined that the course then taught by the Applicant was no longer a desired skill set in the job market.

(ii) The provisional redundancy of the Applicant’s post was made in full conformity with Area Staff Rules 101 and 109.9 and Personnel Directive A/9.

(iii) From 16 September 2011 through 1 October 2012, the Applicant was accorded more than a one year redundancy period to allow him to find an alternative post, well in excess of the three months prescribed in Personnel Directive A/9, during which period he remained gainfully employed and receiving his salary at the grade of his former Instructor post.

(iv) The Agency made diligent efforts to assess the skills and knowledge of the Applicant by assessment examinations to better enable it to identify alternative suitable posts for him.

(v) The Agency made reasonable efforts to identify alternative posts for the Applicant and offered transfer to two alternative Clerk ‘B’ posts that were commensurate with his experience.

(vi) The Applicant suffered no prejudice during the more than one year period the Agency searched for a suitable alternative post for him because during that time he continued to receive his full salary and other entitlements with his salary being charged against various vacant posts.

(vii) The decision to transfer the Applicant to a position as a Clerk ‘B’ at Grade 8, Step 19 level was properly effected pursuant to Agency rules.

27. The Respondent requests the Tribunal to dismiss the Application in its entirety.

The Law

28. Area Personnel Directive A/9, Rev.7 (“PD A/9”) on Separation from Service was in effect at the material time and set out the Agency’s policy on redundancy. It provided as follows:
15. **REDUNDANCY**

15.1 Redundancy arises when a post is

15.1.1. eliminated;

*                    *                    *

15.2 In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing.

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15.4 The purpose of the period of provisional redundancy is to use the time (usually three months)* between the decision to abolish an occupied post and its actual abolition to find a suitable placement for the displaced official or, failing that, to give the appropriate termination notice required by the staff member's letter of appointment.

15.5 It is imperative that redundancy cases be well documented. During the period of provisional redundancy, reasonable effort must be made to find the redundant staff member a suitable placement. It is useful in this regard to maintain a list of all posts that became vacant during the period of provisional redundancy and to show why the staff member was not assigned to any of them. The possibility of providing training to qualify redundant staff members for alternative employment should be considered seriously.

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15.7 A suitable post means:

15.7.1. a post in the same or similar occupation group with the same grade and the same salary and increments for which the staff member is qualified in most aspects; or

15.7.2. a post in a lower grade or with a lower salary or increments to which the staff member agrees to be transferred; or
15.7.3. any other post which, in the opinion of the Commissioner-General and having regard to all the circumstances, including the views of the staff member, is not to the disadvantage of the staff member.

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15.8.2. If the redundant staff member is transferred to a post more than two pay grades lower than the post formerly occupied, the employee shall have his/her salary protected at a grade which is two grades higher than the post to be occupied, and at the incremental step that most closely approximates to that applicable in his/her previous grade, provided that the new step does not exceed the maximum incremental step for the new grade.

Considerations

Redundancy and transfer

29. The Agency has provided sufficient documentary evidence in the form of the March 2011 report of the Planning and Strategy Office of the LFO and supporting documents to show that there was a genuine redundancy situation. It falls within the Agency’s broad discretionary authority to determine which courses to offer at its Vocational Training Centres. The determination by the Agency that the Audio-Visual Maintenance course was no longer of value nor was it productive was made after a proper assessment conducted by the Planning and Strategy Office. There is no evidence of prejudice or any other extraneous factors influencing the decision.

30. Having determined that a genuine redundancy situation existed, the next question for the Tribunal to consider is whether the Agency made a genuine attempt to find the Applicant suitable alternative employment in accordance with PD A/9. The record shows that the Agency made genuine attempts to locate a suitable alternative post for the Applicant, including the invitation to sit technical assessments to help determine which posts he might be qualified for. The Applicant was fully consulted throughout the process leading to his transfer to the
post of Clerk ‘B’. However, the record shows that the Applicant was less than fully cooperative with the Agency’s efforts in that he initially declined to sit the technical assessments to which he was invited, repeatedly insisted on being appointed to the vacant Recreation Officer post despite having been advised on numerous occasions that he was not suitably qualified, and when offered a post as a Clerk ‘B’ at his choice of two of the Agency’s schools was initially unresponsive before finally reporting for duty at one of the schools, and then formally accepting the offer.

31. While the Agency is obliged under its own policy to make a reasonable effort to find a redundant staff member a suitable alternative placement, the staff member who has been declared provisionally redundant is not entitled to insist that he be transferred to a particular post when it had already been lawfully determined that he did not meet the prescribed qualifications for the post in question.

32. PD A/9 sets out a clear definition of what may constitute a “suitable post”. It is for the Agency to determine, having regard to the provisions of PD A/9, which vacant post, if any, the staff member is qualified and suitable for. In this case, the Applicant insisted that he be appointed to the vacant Recreation Officer post despite repeated and detailed explanations from the Agency as to why this was not possible. The Agency cannot be required to appoint a staff member to a post for which he or she is not qualified. The Applicant’s repeated insistence that he be appointed as Recreation Officer was unrealistic.

Grade and Step

33. The Applicant submits that his transfer to the post of Clerk ‘B’ has resulted in a loss in salary and corresponding pension benefits when compared to his previous post. The Applicant was at Grade 11 at the time of his transfer. The post of Clerk ‘B’ to which he was transferred was classified as Grade 6. In accordance with paragraph 15.8.2. of PD A/9 if a redundant staff member is transferred to a post more than two pay grades lower than the post formerly occupied, the employee shall have his/her salary protected at a grade which is two grades higher than the post to be occupied, and at the incremental step that most
closely approximates to that applicable in his/her previous grade. Consequently, the Applicant was appointed as a Clerk ‘B’ at Grade 8, Step 19 allowing the Agency to most closely approximate his previous salary. If placed at Step 20, there would have been a greater discrepancy between the Applicant’s new salary and his previous salary than at Step 19. It would appear from the information provided by the Respondent that this would also have resulted in the Applicant earning a higher salary than that which he received in his previous post.

Allegation of prejudice

34. The Applicant has not provided a shred of evidence of prejudice against him by the Lebanon Field Office. Nor has he provided any evidence that the decision review conducted by Ms. Dismorr was a mere “rubber stamping”. On the contrary, the record shows that the response to his request for decision review was detailed and comprehensive.

Conclusion

35. The Agency has provided a clear and convincing explanation that the decision to discontinue the Audio-Visual Maintenance course was for genuine business reasons. As a consequence of the cessation of the kind of work which the Applicant had been doing he was properly declared to be “provisionally” redundant in accordance with the relevant Personnel Directive. Redundancy was not being used as a pretext for trying to get rid of the Applicant. On the contrary, whilst the managers concerned used their best endeavours to maintain the Applicant in employment, he was not always as cooperative as he should have been in the attempts that were being made to redeploy him. On receipt of the Respondent’s Reply the Tribunal gave the Applicant leave to file a rejoinder. In his response the Applicant failed to raise any issue of substance that could call into question the fact of redundancy, the decision to declare him provisionally redundant, and the steps that were taken to offer him suitable alternative employment. It is not for the Applicant nor indeed the Tribunal to tell the Agency how to run its business. Absent extraneous factors, maladministration and/or breach of due process the Tribunal will not interfere.
36. The application has no merit and is dismissed.

(Signed)

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Judge Goolam Meeran
Dated this 13th day of June 2013

Entered in the Register on this 13th day of June 2013

(Signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman