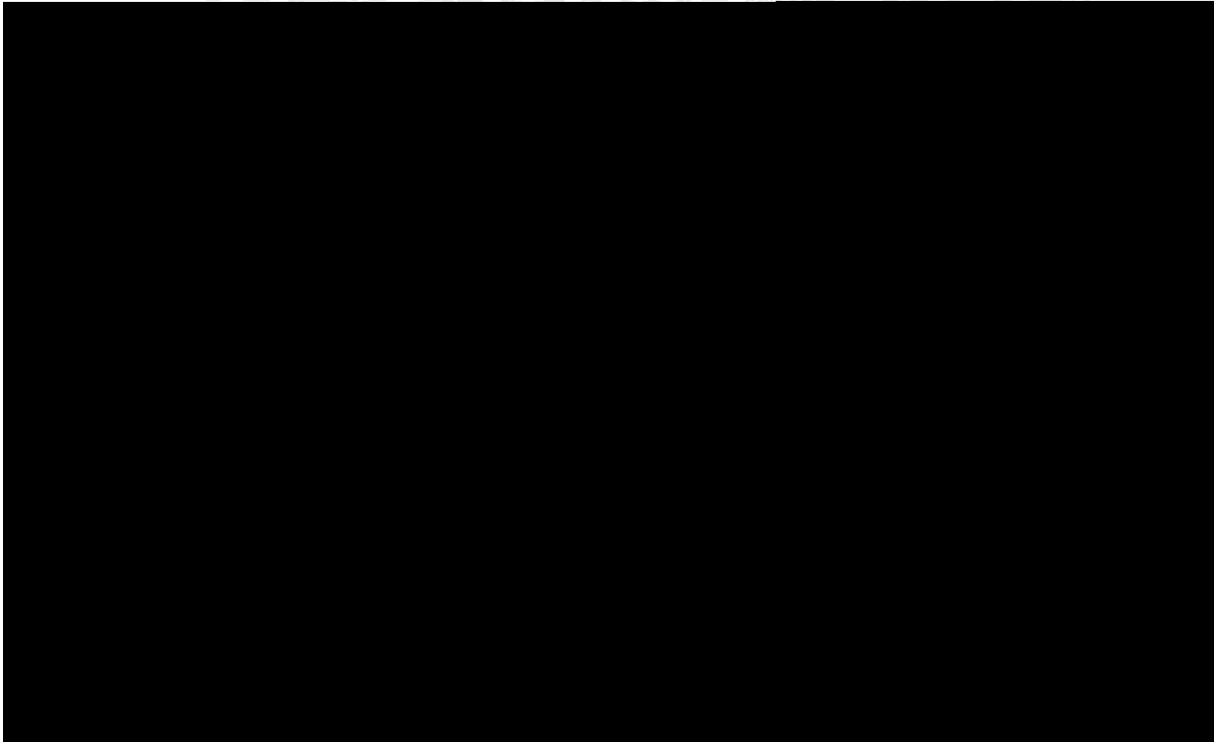




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JUDGE KANWALDEEP SANDHU, PRESIDING.

Introduction

1. Mr. Adnan Salah Al-Refaea¹ (the “Appellant”) appeals the 25 April 2019 decision of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the “UNRWA Dispute Tribunal”). The UNRWA Dispute Tribunal dismissed the Appellant’s application to review the decision of United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA” or the “Agency”) to transfer him to the post of Clerk “B” at Talbieh Preparatory Boys School, Jordan Field Office, as a result of the abolition of his post.

2. The Appellant also seeks “moral damages”, reinstatement to his previous post or a post close to his residence, “better compensation for his service injury” and compensation for transportation costs. The Commissioner-General asks for dismissal of the appeal.

Statutory Mandate

3. Article 2(1) of the Special Agreement between the United Nations and UNWRA dated 11 December 2009 (the “Special Agreement”) provides that the Appeals Tribunal is competent to

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UNRWA Operations, JFO (the “DUO/J”) approved the Interview Panel’s recommendations on 23 October 2017.

11. On 1 November 2017, the Appellant submitted a request for review of the decision to declare him provisionally redundant in his post as Clerk “A” at the Grade 7 level, of which he was informed on 13 September 2017.

12. By letter to the Appellant dated 7 November 2017, the DUO/J proposed to transfer him to the post of Clerk “B” at the Grade 6 level at Talbieh Preparatory Boys School, JFO (Talbieh School), with grade and step protection. Talbieh School is situated some 70 kilometers away from the Appellant’s residence. On 12 November 2017, the Appellant

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rest of his employment with the Agency. Lastly, regarding the Appellant's claim that he should have been offered a similar vacant post in the Al Mareekh area closer to his residence, the UNRWA Dispute Tribunal held that the process of placing provisionally redundant staff members had been conducted in a transparent manner in accordance with the provisions of Area Staff Personnel Directive A/9/Rev. 10 (the "Directive").²

Submissions

The Appellant's Submissions

16. The Appellant submits that, while he did not object to the post that he was transferred to, his objection is to the fact that the workplace for his new post is far away from where he lives and is not suitable considering his health condition and service-incurred disability. He says to get to the workplace is a waste of time and money. The monthly transportation expense of approximately USD 154 is a burden on him considering his monthly salary at USD 776. He also says the long distance does not fit with his health condition and disability.

17. He complains that he was not adequately kept informed of the restructuring plan like other employees. He also says that a promise was made by the DUO/J in a meeting that all staff members would be offered alternative posts close to their residence. He argues that it is a "misconception" to say that the promise by the DUO/J was not binding on the Agency. Also, he submits that the Agency had an obligation to provide his employment close to his residence as was "agreed" pursuant to the settlement agreement.

18. The Appellant also says that when he was chosen to be a clerk as a result of the restructuring, he was offered a post in three areas with the Al Talybiah camp being the closest to his residence, this in spite of a post that was available in Al Mareekh that is close to his residence. He was informed that another employee was offered and accepted that post.

19. The Appellant requests that the Appeals Tribunal award him an unspecified amount of compensation for his moral and psychological damages resulting from the restructuring process, and from the work injury leading to disability, order his transfer to another job near his residence and suitable to his health and disability, and award him USD 2,000

² Area Staff Personnel Directive No. A/9/Rev.10 titled "Separation from service" effective 23 June 2015.

representing the transportation cost from his residence to and from Talbieh School from 17 December 2017 to 10 June 2019.

The Commissioner-General's Answer

20. The Commissioner-General submits that the Appellant's appeal is not well founded on any of the grounds set forth in Article 2 of the Special Agreement. The Appellant has failed to demonstrate in what respect the UNRWA Dispute Tribunal exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred on a question of fact resulting in a manifestly unreasonable decision. He does not criticize the UNRWA Dispute Tribunal's reasons for dismissing his application. He restates the facts of his case, repeats the arguments that he raised before the

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its own decision for that of the Administration or Agency. As we stated in the seminal case of *Sanwidi*:¹¹

When 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.

36. We uphold the findings of the UNRWA Dispute Tribunal and find that the Appellant has not met the burden of proving that the decision to transfer him to the post of Clerk "B" at Taibieh School after the abolition of his post was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or an error of law.¹²

37. The Agency held meetings with affected staff in order to provide them with information about the process and made reasonable efforts to locate suitable posts commensurate with the redundant staff's and the Appellant's qualifications and experience as required by the Directive. There is no evidence of an arbitrary or capricious process nor is there evidence the Appellant's resulting transfer was motivated by an improper purpose. The UNRWA Dispute Tribunal found the procedures were followed and there was no evidence that the Directive, Regulations and Rules were not applied in a fair, transparent and non-discriminatory manner.

38. As for the Appellant's argument that there was a "promise" provided to staff to be close to their residence or that there was a violation of the settlement agreement, the UNRWA Dispute Tribunal reasonably held that there was no obligation on the Agency to associate every staff member in a restructuring process to their location of choice or to ensure that the Appellant would retain his post for the rest of his employment with the Agency. The 2012 agreement did not oblige the Agency to keep him as Clerk A, Grade 7 within the PLD

¹¹ *Sanwidi*

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