

**Administrative Tribunal**

Distr.: Limited
30 September 2003
Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1116

Cases No. 1218: YOUSSEF
No. 1219: ISSA
No. 1220: MARSHOUD
No. 1221: AMAYRI

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestinian Refugees in the
Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Kevin Haugh, Vice-President; Mr. Spyridon Flogaitis;

Whereas, on 25 May 2001, Zakieh Youssef and Kamleh Marshoud, staff members and Zeinab Issa and Zahra Amayri, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 24 August, 14 and 18 September 2001, the Applicants, after making the necessary corrections, again filed Applications containing pleas which read as follows:

"Part II***Pleas***

I request ... oral hearings and I request that:

1. [I be] offered a suitable job with the Agency ...
2. If [my appeal cannot be] entertained [to be] paid the amount [around \$100,000] that would [have been] due effective 1 January 2000 until [retirement age, including salary, Provident

Fund and termination indemnities as if I had not left the Agency]
...

3. [I be paid] the amount of \$500 in costs of administrative expenses ...”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 June 2002 and once thereafter until 30 September 2002;

Whereas the Respondent filed his Answers on 31 July 2002;

Whereas the Applicants filed Written Observations on 17 March 2003, and, on 22 June, the Respondent submitted comments thereon;

Whereas, on 22 July 2003, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts common to all four cases are as follows:

On 26 May 1997, the Field Personnel Officer, Lebanon, advised the Applicants that their posts would be become redundant as of 31 December 1999; that every effort would be made to reassign them to another post in the Field for which they had the requisite qualifications; but, if that could not be achieved, their appointments would be terminated, effective 31 December 1999, in accordance with staff rule 109.9, para.3 (B).

During the period of redundancy, the Applicants were all offered a number of posts, such as Doorkeeper/Cleaner and School Attendant at Grade 01, but as all these posts were at a much lower grade, they did not accept them, although, as required by paragraph 14.8.2 of Personnel Directive PD A/9/Rev.6/Amend.1 of 1 January 1999, they would receive grade protection to Grade 03 and at the incremental step that most closely approximated that in their previous grade.

Whereas the facts in the case of Applicant **Youssef** are as follows:

Effective 10 September 1990, the Applicant entered the service of UNRWA on a temporary indefinite appointment as an Area staff member in the capacity of Sewing Instructor, Grade 05, at Burj El Shemali Women's Programme Centre, Tyre Area, Lebanon.

Effective 1 December 1999, at the very end of her period of provisional redundancy, she accepted a transfer to the post of School Attendant, Grade 01, at Al-Mansourah School, with a one-year probationary period, and with grade protection to Grade 03.

On 2 January 2000, the Applicant wrote to the Director of UNRWA Affairs, Lebanon, requesting review of the “administrative decision” to declare her redundant. She also claimed that no suitable posts had been offered to her during the redundancy period, and requested that she be reassigned to the post of Distribution Team Leader or that of Guard A. On 24 January 2000, the Deputy Director of UNRWA Affairs and Field Administration Officer, Lebanon, replied that she had been offered an alternative post in lieu of redundancy which she had accepted, and that the action taken by the Administration in declaring her post redundant was not an administrative decision.

Whereas the facts in the case of Applicant **Marshoud** are as follows:

Effective 2 May 1991, the Applicant entered the service of UNRWA on a temporary indefinite appointment as an Area staff member in the capacity of Women’s Programme Supervisor Grade 03 at Wavel Camp, Beqa’a, Lebanon.

On 1 January 1999, the post of Seamstress, Grade 03, in the Health Department became vacant. The Applicant was called to an interview, but another provisionally redundant staff member from a Women’s Programme Centre was appointed to the post. On 30 November 1999, the Field Personnel Officer offered the Applicant the option of a transfer to three posts: two School Attendant posts in the Beqa’a Area and a Cleaner’s post in Ein El Hilweh Camp in the Saida Area. All three posts were at Grade 01, but the Applicant was offered grade protection at Grade 03. She was advised that if she did not accept any of the posts, her appointment would be terminated with effect from 31 December 1999. In her reply to the letter of 30 November 1999, of 13 December 1999, the Applicant requested transfer to a post in the Saida Area Office, rather than in Ein El-Hilweh Camp in the Saida Area, and asked that her grade and step remain unchanged.

Effective 1 January 2000, the Applicant accepted a transfer to the post of Cleaner, Grade 01, at the Saida Area Office, with grade protection at Grade 03. At the time she accepted the offer, she asked that a post be found more commensurate with her qualifications.

On 12 January 2000, the Applicant wrote to the Director of UNRWA Affairs, Lebanon, requesting review of the “administrative decision” to declare her redundant. She also asserted that she could have been reassigned to other posts, that no suitable posts had been offered to her during the redundancy period, and requesting that she be reassigned to the post of Distribution Team Leader or that of Guard A. On 24 January 2000, the Deputy Director of UNRWA Affairs and Field Administration Officer, Lebanon, replied that she had been offered an alternative post in lieu of redundancy which she had accepted, and that the action taken by the Administration in declaring her post redundant was not an administrative decision.

Whereas the facts in the case of Applicant **Issa** are as follows:

Effective 19 June 1989, the Applicant entered the service of UNRWA on a temporary indefinite appointment as an Area staff member in the capacity of Sewing Instructor, Grade 05, at Ein Hilweh Camp, Saida Area, Lebanon.

During her period of redundancy, the Applicant was offered a number of posts, such as Doorkeeper/Cleaner and School Attendant, but as all these posts were at a much lower grade, she did not accept any of them.

Early September 1999, the Applicant wrote to the Director of UNRWA Affairs, requesting that she be appointed to another post, in lieu of redundancy. On 14 September 1999, the Deputy Director of UNRWA Affairs and Field Administration Officer replied to the Applicant, advising her that every effort had been made to reassign her to another post in the Field, but that despite those efforts, there was still no alternate post to offer her. He assured her that her case would continue to receive their full attention.

On 24 November 1999, the Applicant was offered a transfer to one of two available posts with grade protection at Grade 03. The Applicant rejected both posts, hoping for a better offer.

On 31 December 1999, as no vacant post suitable to her qualifications and experience had been found, the Applicant’s appointment was terminated in the interest of the Agency on the ground of redundancy. She was paid eight months’ salary, her termination indemnity entitlement for the loss of her employment, as part of her separation benefits.

On 12 January 2000, the Applicant wrote to the Director of UNRWA Affairs and requested that he review the decision to terminate her appointment. The Deputy Director of UNRWA Affairs and Field Administration Officer replied that she had been offered an alternative post in lieu of redundancy which she had not accepted, and that the action taken by the Administration in declaring her post redundant was not an administrative decision.

Whereas the facts in the case of Applicant **Amayri** are as follows:

Effective 1 April 1987, the Applicant entered the service of UNRWA on a temporary indefinite appointment as an Area staff member in the capacity of Sewing Instructor, Grade 05, at Wavel Camp, Beqa'a Area, Lebanon.

On 14 October 1999, the Applicant was offered a transfer to the post of School Attendant, Grade 01, at Rami Elementary School in the Beqa'a Area with grade protection at Grade 03. The Applicant returned the letter of offer with a handwritten note thereon, accepting the transfer and requesting that she be paid transport fees. She also indicated that she wished to be considered for transfer to any suitable vacant post that might occur in the Beqa'a Area.

On 27 October 1999, the Applicant was advised that her transfer to the post of School Attendant at Rami School would take effect on 1 November 1999. However, in a letter dated 4 November 1999 (three days after her duties were to begin), the Applicant requested that her transfer be postponed until 31 December 1999. On 19 November 1999 she was informed that, based on her letter, her transfer to the Rami School had been cancelled.

On 29 December 1999, the Applicant was advised that, as no vacant post suitable to her qualifications and experience had been found, her appointment would be terminated on 31 December 1999.

In a letter to the Director, Division of Personnel, Lebanon, dated 31 December 1999, the Applicant accepted a transfer to the post of School Attendant at Rami Elementary School "beginning the new year". However, in a handwritten note on the 31 December letter, dated 3 January 2000, she withdrew her acceptance of the post.

On 31 December 1999, as no vacant post suitable to her qualifications and experience had been found, the Applicant's appointment was terminated in the interest of the Agency on the ground of redundancy. The Applicant was paid eight

months salary as her termination indemnity entitlement for the loss of her employment, as part of her separation benefits.

On 25 February 2000, all four Applicants lodged appeals with the Area Staff Joint Appeals Board (AJAB). The AJAB adopted reports on all four cases on 12 November 2000. In each report, the evaluation and judgement, and recommendation read, in part, as follows:

“III EVALUATION AND JUDGEMENT

...

a) The Board noted that termination of the Appellant’s services on the grounds of redundancy was properly made in accordance with the [Area Staff Regulations and Rules].

...

c) ... [T]he Board could not establish that the ... decision ... [was] motivated by prejudice against the Appellant and resolved that the Administration [had] acted within the framework of standing rules.

IV. RECOMMENDATION

17. ... [The] Board unanimously makes its recommendation to uphold the Administration’s decision ... and that the case be dismissed.”

In the reports for Applicants **Youssef** and **Marshoud**, the Board added:

“However, in view of the fact that the Appellant accepted the post offered to her, the Board wishes to recommend that the Appellant be considered for any vacant post commensurate with her qualifications when she applies for such a post”.

On 17 December 2000, the Commissioner-General transmitted copies of the JAB reports to the Applicants and informed them as follows:

“...

I agree with the Board’s findings and its conclusion that the Administration acted in accordance with the Agency’s regulations and rules, in particular the rules on redundancy, without prejudice against you. Accordingly, I have accepted the Board’s recommendation that the Administration’s decision appealed against should be upheld and have dismissed your appeal.”

In his letters to Applicants **Youssef** and **Marshoud**, he added:

“The Board recommended further that the Administration consider future applications from you for any vacant post for which you possess the requisite qualifications. I confirm that the Agency will consider applications from you for any vacant post for which you possess the

necessary qualifications and experience, and I encourage you to apply for such posts.”

In the letters to Applicants **Issa** and **Amayri** he added:

“If vacancies fitting your qualifications and experience were to be advertised and if you were [to] apply, your application will be given the highest consideration”.

On 24 August, and on 14 and 18 September 2001, the Applicants filed the above-referenced Applications with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicants contend that they were not properly treated, in accordance with the redundancy provisions.
2. The Agency did not make efforts to offer the Applicants suitable posts in their Area when such posts were available, but only offered posts at the very end of the redundancy period, when only lower level posts were left.

Whereas the Respondent's principal contentions are:

1. There is no basis upon which the Applicants are entitled to compensation for unpaid salary, as they have not suffered any such loss.
2. The Respondent acted in accordance with the letter and spirit of paragraph 14 of Personnel Directive A/9 and the Applicants received the benefit of a strict adherence to the rules.
3. The Applicants have not established that the decision to offer them lower grade posts was motivated by prejudice or other extraneous factors.

The Tribunal, having deliberated from 30 June to 24 July 2003, now pronounces the following Judgement:

I. The four Applicants have filed Applications concerning similar alleged wrongs arising from similar administrative decisions sufficiently related to each other to be considered jointly. The Tribunal will therefore deal with all of them in the same Judgement.

II. The relevant facts of all four cases are comparable, namely that the Agency, as a result of a redeployment exercise, decided to eliminate from the

staffing table a number of posts in the Women's Programme Centres, Lebanon Field. The only difference is, that Applicants **Youssef** and **Marshoud** accepted posts at a lower level, with grade and salary protection, and that Applicants **Issa** and **Amayri** did not, and were terminated in the interest of the Agency on the ground of redundancy. The Tribunal is satisfied that that difference has no impact on the outcome of these cases, as they all turn about the issue of whether the Administration exercised all reasonable efforts to place the redundant staff members in suitable posts. As regards the Applicants **Youssef** and **Marshoud**, it would be sufficient to say that their mere acceptance of the posts offered to them makes those posts "*suitable*", according to the provisions of paragraph 14.7.2 of Personnel Directive PD A/9/Rev.6/Amend.1.

III. The Tribunal observes that the period of each of the Applicants provisional redundancy came to more than 30 months. As PD A/9/Rev.6/Amend.1 requires that the period of provisional redundancy must be at least three months, during which the Administration is under an obligation to search for a suitable placement of the displaced staff members, the time accorded to the Applicants was more than sufficient. In addition, the Tribunal is satisfied that the termination of services on grounds of redundancy under staff rule 109.1, in the cases of **Issa** and **Amayri** was made correctly.

IV. The Tribunal considers, then, that there seems to remain but one single aspect that needs to be addressed in the decision of the present cases, namely, as mentioned above, whether or not the Organization made all reasonable efforts to place the redundant staff members in "*suitable posts*".

"*Suitable posts*" are defined in paragraph 14.7 of PD A/9/Rev.6/Amend.1 as:

14.7.1. 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

14.7.2. a post in a lower grade or with a lower salary or increments to which the staff member agrees to be transferred; or

14.7.3 any 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."

V. The Applicants were offered posts that, even if they were lower in grade than the posts previously occupied by the Applicants, they were under salary and grade protection so that the Applicants would not be economically disadvantaged. The position of the Respondent is that the jobs offered to the Applicants were the only ones available and that the other available vacant positions were not commensurate with their qualifications and abilities.

The posts to which the Applicants aspired and that were according to them vacant, were, for example, those of Distribution Team Leader (Grade 03), which required secondary education, a degree that none of the Applicants possessed. The Applicants argued that their particular experience substituted for the absence of a secondary education. However, the Tribunal finds that the Administration acted properly when it rejected this contention, since mere attendance at a number of courses cannot substitute for a proper secondary education. Indeed, the Respondent points out that, since 1999, the Agency no longer accepts experience and training as a substitute for minimum academic qualifications, and that the relevant paragraph mentioning “equivalence” was deleted in vacancy announcements and newer post descriptions.

The Applicants also indicate that a number of vacant Driver posts existed which would have been acceptable to them. It appears however, that such posts were abolished as soon as they were vacant, as there was already an excessive number of drivers in the Lebanon Area. Moreover, drivers licensed to operate heavy vehicles were in demand, but none of the Applicants endeavoured to obtain the required license, claiming that possession of such a license was desirable but not required by the job description. However, according to that job description, the incumbent must have “a driving licence ... to drive the type of vehicle to which assigned” and obviously, if what was needed were drivers for heavy vehicles, that was the type of vehicles to which they would be assigned.

Regarding the alleged duty of the Administration to offer the redundant staff members a course on driving heavy vehicles, the Respondent answers that the Administration is obliged, according to paragraph 14.5 of PD A/9/Rev.6/Amend.1, only to “seriously consider” such possibility but not to provide it and that after serious consideration of the matter, the Administration decided against it, apparently, among other reasons, because the training in question was not available within the Agency.

Finally, the Applicants referred to other allegedly available “*suitable posts*” for which they could have been considered, namely Guard A (Grade 01) and Guard B (Grade 02). However, Lebanon Field required a “security related background”, a requirement which the Tribunal finds reasonable given the state of lawlessness that apparently prevailed in the refugee camps in Lebanon, a state of affairs which the Applicants did not deny.

The Tribunal fully comprehends the reasons for the Applicants’ discomfort in accepting positions of lower social standing, even with salary protection. Nevertheless, the Tribunal recognizes the lack of suitable vacancies available, a situation easily understandable if account is taken of the economic and financial difficulties afflicting all international organizations, UNWRA in particular.

VI. The Applicants allege that they only received offers at the very end of the 30-month period of provisional redundancy, and that this was done deliberately to pressure them into accepting inferior positions, as a result of the Administration’s pronounced prejudice against women. Neither of the last two contentions was supported by evidence.

VII. The Application is, therefore, rejected in its entirety.

(Signatures)

Julio Barboza
President

Kevin Haugh
Vice-President

Spyridon Flogaitis
Member

Geneva, 24 July 2003

Maritza Struyvenberg
Executive Secretary

.../YOUSSEF/ISSA/MARSHOUD/AMAYRI