

2018-UNAT-838, Al-Ashi

UNAT Held or UNDT Pronouncements

UNAT considered the appeal of the consolidated applications. With respect to the first issue, UNAT found no error in UNRWA DT's conclusion that the Appellant had failed to establish that the decision not to confirm his appointment as TDSE Advisor and to transfer him to his previous post was unlawful. UNAT noted that there was no merit in the Appellant's contention that UNRWA DT failed to examine the relevant facts and to apply legal and regulatory provisions to his performance evaluations during his probationary period. UNDT also noted that the review of the Appellant's performance assessments revealed that his probationary service was not satisfactory, and that past professional experience is not relevant to the requirement of satisfactory performance during the probationary period. With respect to the second issue, UNAT found that UNRWA DT was also correct in deciding that the Appellant failed to establish that the decision to close his complaint of prohibited conduct was unlawful. UNAT agreed with UNRWA DT's holding that the decision to close the Appellant's complaint by a managerial intervention was effective and not manifestly unreasonable. UNAT also noted that the Appellant claimed that there were some other issues UNRWA DT failed to address, but that it was not necessary to address each and every claim, especially when it has no merit. UNAT held that UNRWA DT considered all evidence relevant to the issues before it and that the judgment was thorough, well-reasoned, and fair. UNAT dismissed the appeal and affirmed UNRWA DT's judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested two decisions. The first decision was to not confirm his appointment as TDSE Advisor, Grade 16, and to transfer him to his previous post of Education Specialist, Grade 13, thus canceling his promotion. The second decision was to close his first complaint of prohibited conduct. UNRWA DT found that the Applicant failed to establish that the first contested decision not to confirm his appointment as TDSE Advisor, and to transfer him to his previous post, was unlawful under the applicable legal framework for probationary appointments. UNRWA DT further found that the Applicant had failed to demonstrate that the prohibited conduct in question was unlawful and that the decision to close this complaint by management intervention was "effective and not manifestly unreasonable." UNRWA DT dismissed both applications on the merits.

Legal Principle(s)

Past professional experience is not relevant when conducting a performance assessment during a probationary period. The Director of Human Resources is permitted to make decisions regarding managerial action in cases where there are factual bases for allegations that do not justify disciplinary proceedings but warrant some other action. It is not necessary for a court to address each and every claim made by a litigant, especially when a claim has no merit.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Al-Ashi

Entity

UNRWA

Case Number(s)

2017-1131

Tribunal

UNAT

Registry

New York

Date of Judgement

22 Mar 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance management

Performance evaluation

Reassignment or transfer

Discretion

Applicable Law

Other UN issuances (guidelines, policies etc.)

- General Staff Circular No. 06/2010

Staff Regulations

- Regulation 4.2