

2018-UNAT-852, Sarieddine

UNAT Held or UNDT Pronouncements

UNAT considered the Appellant's appeal, requesting that the UNRWA DT judgment be vacated. UNAT agreed with UNRWA DT and upheld its findings that the Agency was entitled, under the provisions of paragraph 2 of FTI 01/2016, to fill the concerned post by means of a lateral transfer of current staff members. UNAT also agreed with, and upheld, the ruling that it was not within the remit of UNRWA DT to pronounce on the exercise of the Agency's discretion in deciding on the lateral transfers unless there is evidence that the discretion was exercised arbitrarily or unlawfully. UNAT found that there was no evidence to support the allegation of arbitrary and unlawful exercise of discretion by the Agency as it relates to the contested transfer decision. Moreover, UNAT found no evidence of the assertions made by the Appellant that the selection process for the employment roster was corrupted and that he had been subjected to discrimination during the selection process. UNAT found no fault with the judgment of the UNRWA DT and, accordingly, affirmed the judgment and dismissed the appeal.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Agency's decision to reassign a staff member. UNRWA DT found that the Agency was entitled to fill the concerned post by means of transfer of a current staff member. UNRWA DT further considered that it was not within its remit to pronounce on the exercise of the Agency's discretion in deciding on the lateral transfers unless the discretion was exercised arbitrarily or unlawfully. UNRWA DT held that the transfer, in this case, was not arbitrary or unlawful as the decision was taken in line with the LFO's practice under FTI 01/2016 to process transfer requests before rostered candidates and to prioritize candidates based on their seniority. UNRWA DT further held that even if the Applicant's contention that "the selection process for the employment roster was corrupted and he was subjected to discrimination during the selection process for not being a Palestine refugee" was true, it would be "not only...inadequately supported by evidence

but...also irrelevant to the impugned decision [to] transfer...[the staff member] to a GF post of P&L Clerk”. UNRWA DT accordingly dismissed the application in its entirety.

Legal Principle(s)

UNRWA Area Staff Regulation 4. 3, together with FTI 01/2016, provide the basis for the lateral transfer of staff within the Agency. The Administration has the power to restructure and reorganize its units and its departments to lend to greater efficiency, and it is not up to the UNDT to pronounce on the exercise of this discretion unless there is evidence of arbitrary and unlawful exercise of the discretion. The filling of posts by transfer of existing staff represents an exception to the general principle that posts shall be filled through a competitive process.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Sarieddine

Entity

UNRWA

Case Number(s)

2018-1140

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer
Discretion

Applicable Law

Other UN issuances (guidelines, policies etc.)

- Field Technical Instructions No. 01/2016 (Lateral Transfers Initiated at the Request of Staff, Lebanon Field Office)

UNRWA Area Staff Regulations

- Regulation 4.3

Related Judgments and Orders

2016-UNAT-624