

2023-UNAT-1350, Ismail Said Abu Hatab

UNAT Held or UNDT Pronouncements

The UNAT held that the UNRWA DT correctly exercised its broad discretion with regard to its case management in concluding that the record before it was sufficient to render a decision without an oral hearing. It concluded that the Appellant has not presented any grounds as to why an oral hearing would have been necessary and thus did not show that the UNRWA DT exercised its discretion in such manner as to affect the outcome of the case, as required by Article 2(1)(d) of the Appeals Tribunal Statute.

With regard to the Appellant's argument that the non-selection decision was unlawful because the signatures of two members of the interview panel were missing on the interview panel's recommendation, the UNAT found that it must be rejected because it was raised for the first time on appeal. Indeed, the UNAT held that even considering that the Appellant took notice of the Commissioner-General's reply and its annexes only on 4 May 2022, he would have had ample time to file a request for leave to file observations and to raise this argument before the UNRWA DT issued the impugned Judgment on 29 May 2022, but he decided not to do so. It follows that he is estopped from raising it for the first time on appeal.

Moreover, the UNAT concluded that even if the Appellant were permitted to introduce this argument at this stage of the proceedings, it must fail because pursuant to paragraph 69 of Area Staff Personnel Directive No. PD/A/4/ Part II/Rev. 7/Section I, interview panels must consist of at least three and normally up to five members. However, the UNAT found that fact that the signatures of the Area Education Officer and of the Chief Area Officer were missing on the interview panel's recommendation did not mean that they were not part of the interview panel or that they did not agree with its recommendation. Therefore, it concluded that the UNRWA DT did not err in concluding that the Appellant's candidacy was given full and fair consideration and that his non-selection for the roster was based on

objective and impersonal criterion, with no indication of bias, conflict of interest or discrimination.

The UNAT dismissed the appeal and affirmed Judgment No. UNRWA/DT/2022/018.

Decision Contested or Judgment/Order Appealed

The Appellant, a School Counsellor at Nuzha Preparatory Boys' School No. 2, contested the decision of the UNRWA not to select him for the 2021-2022 roster created for the posts of School Principal for All Areas, Grade 15. In its Judgment No. UNRWA/DT/2022/018, the UNRWA DT denied the Appellant's request for an oral hearing, concluded that his candidacy was given full and fair consideration and dismissed his application.

Legal Principle(s)

The Appeals Tribunal has consistently emphasized the broad discretion of the first instance tribunal with regard to its case management. It follows that a party, in order to be successful on appeal, not only has to assert and show that the UNDT committed an error in procedure in denying his or her request for an oral hearing but also that this error affected the decision on the case.

A party should not be permitted to introduce new arguments for the first time on appeal. It is not reasonable for a party to assert that the first instance tribunal erred on questions of fact or law with respect to allegations which were not raised before the first instance tribunal for its consideration.

Pursuant to paragraphs 10 to 12 of General Staff Circular No. 09/2021 (UNRWA Dispute Tribunal Practice Direction No. 02: Filing of Motions, Responses and Observations), observations (i.e. Applicant's submissions in response to the Respondent's reply) may only be filed after submitting a request for leave to file observations to the UNRWA Dispute Tribunal.

Pursuant to paragraph 69 of Area Staff Personnel Directive No. PD/A/4/Part II/ Rev. 7/Section I, interview panels must consist of at least three and normally up to five members.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ismail Said Abu Hatab

Entity

UNRWA

Case Number(s)

2022-1738

Tribunal

UNAT

Registry

New York

Date of Judgement

6 Jul 2023

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discretionary authority
Right to comment/respond
Due process
Procedure (first instance and UNAT)
Admissibility of evidence
Oral hearings
Staff selection (non-selection/non-promotion)
Full and fair consideration
Selection decision

Applicable Law

UNAT Statute

- Article 11.3
- Article 2.1
- Article 2.1(d)

UNRWA DT RoP

- Article 6.1

UNRWA Personnel Directives

- PD A/4/Part II/Rev.7

Related Judgments and Orders

2017-UNAT-733

2014-UNAT-482

2015-UNAT-547