

2024-UNAT-1424, Amal Ali El Khaled

UNAT Held or UNDT Pronouncements

The UNAT noted that in light of multiple competing requests for lateral transfer, the staff member had not been one of the candidates who was recommended and selected for the position because her responsibilities had been different from the duties of the requested position, and the Agency sought candidates more familiar with those duties.

The UNAT held that under the relevant legal provisions governing lateral transfers, read together and not in isolation, the Agency had been authorized to base its assessment on the candidates' suitability for the post instead of seniority, compelling reasons, and performance evaluation.

The UNAT considered that exercising discretion to hire persons whose duties were similar to the requirements of the role and who were more familiar with the duties of the position was not illegal, unfair or unreasonable. The UNAT agreed with the UNRWA DT's finding that preferring candidates with prior experience in the exact role in this case had not been so unreasonable as to constitute abuse of discretion.

The UNAT found that the Agency had complied with the mandatory procedural requirements.

The UNAT held that the staff member's assertion that the Agency should have been aware of her medical diagnosis because her doctor was also a staff member was misplaced as contrary to patient confidentiality.

The UNAT dismissed the appeal and affirmed the UNRWA DT's Judgment.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision not to accede to her request for a lateral transfer to the post of Finance Assistant at UNRWA.

In Judgment No. UNRWA/DT/2022/055, the UNRWA DT dismissed the application as without merit.

The staff member appealed.

Legal Principle(s)

The general principle is that posts are filled through a competitive selection process.

The proper role of the Dispute Tribunal in conducting a judicial review of an administrative decision is limited to examining its legality, rationality, compliance with procedure, and proportionality, and not to engage in a merit-based review.

The Dispute Tribunal will not lightly interfere with the exercise of managerial discretion in matters such as staff transfer.

Seniority is not the lone selection criterion in making the determination on the lateral transfer within UNRWA.

Considerations of the Administration may include those not explicitly listed in the governing issuance, provided that the considerations are rationally connected to the power of the Secretary-General to secure the highest standards of efficiency, competence and integrity in making appointments.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Amal Ali El Khaled

Entity

UNRWA

Case Number(s)

2023-1779

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Apr 2024

President Judge

Judge Forbang

Judge Gao

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discretionary authority

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)

UNAT Statute

UNRWA Area Staff Regulations

Related Judgments and Orders

2018-UNAT-852

2018-UNAT-884

2010-UNAT-084

2019-UNAT-971

2022-UNAT-1199