

2024-UNAT-1467, Qasem Qasem

UNAT Held or UNDT Pronouncements

The Appeals Tribunal found, in relation to Mr. Qasem's exclusion from consideration for the Acting Head position, that the UNRWA DT erred in finding Mr. Qasem's application not receivable. The Appeals Tribunal however found that in the circumstances of this case, it was in the interest of judicial economy to review the case on the merits without remand. The Appeals Tribunal found that while the Administration had unlawfully excluded Mr. Qasem's application from consideration, this irregularity had no impact on the selection decision. Considering Mr. Qasem's performance, administrative and disciplinary record as well as the number of shortlisted candidates and the temporary nature of the Acting Head position, Mr. Qasem's chances for selection were remote.

Turning to the purported decision not to provide Mr. Qasem with the outcome of the investigation of his complaints against a subordinate, the Appeals Tribunal concluded that the UNRWA DT did not err in finding Mr. Qasem's application not receivable. The Appeals Tribunal found that Mr. Qasem's application was premature as only an administrative decision issued based on an investigation report constitutes an appealable administrative decision.

The Appeals Tribunal granted the appeal, in part, and affirmed the UNRWA DT Judgment, albeit, in part, for different reasons.

Decision Contested or Judgment/Order Appealed

Before the UNRWA DT, Mr. Qasem contested UNRWA's decision to exclude from consideration his application for the post of Acting, Head Health Centre A at the Amir Hassan Quarter Health Centre-Zarqa Area, Jordan Field Office (JFO), as well as the decision not to provide him with the outcome of the investigation against a subordinate.

By Summary Judgment No. UNRWA/DT/2023/033, the UNRWA DT decided to consolidate both cases.

The UNRWA DT dismissed as not receivable *ratione materiae* Mr. Qasem's application challenging the decision to exclude him from consideration for the Acting Head position on grounds that he had failed to submit a request for decision review.

Turning to the decision not to provide him with an investigation report, the UNRWA DT found that Mr. Qasem had not pointed to any term or condition of his employment affected by the Agency's election not to provide the information he sought, nor had he explained how this decision would have a direct legal consequence on the terms or conditions of his appointment. The UNRWA Dispute Tribunal concluded that Mr. Qasem had not challenged an appealable administrative decision, and that his application was therefore not receivable *ratione materiae*.

Mr. Qasem filed an appeal.

Legal Principle(s)

The failure of the first instance court on a question of receivability normally results in rescission of the impugned Judgment and remand for a fresh review. This solution better serves the right of the parties to appeal. However, considerations of judicial economy may convince the UNAT to review the case on the merits without remand.

In reviewing administrative decisions regarding appointments and promotions, the UNDT examines: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration. Procedural irregularities shall result in the rescission of the contested decision only when the staff member had a significant chance of selection or promotion.

The onus of proof of allegations of bias and prejudice is on the person alleging same.

The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment; the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member.

An administrative decision does not produce legal consequences unless it is final. Intermediary steps and processes do not constitute final reviewable administrative decisions.

It is only when the investigative and where applicable the subsequent administrative and/or disciplinary process has been concluded that the aggrieved party, the subject or the complainant, may contest the final administrative decision taken by the Administration.

A complainant who is also the victim has certain rights to information under DIOS Technical Instruction on Investigation Policy 01/2021. However, these rights cannot be raised with the Tribunals before the issuance of the final decision made by the Administration to dispose of the case, whether by the closure of the investigation, or by finalizing an administrative or disciplinary process.

The right to due process or procedural fairness only arises in relation to administrative decisions which materially and adversely affect the rights or legitimate expectations of staff members.

Outcome

Appeal granted in part

Outcome Extra Text

Mr. Qasem's appeal is granted in part, and Judgment No. UNRWA/DT/2023/033 is reversed in respect of Case No. UNRWA/DT/JFO/2023/050 [the decision not to consider Mr. Qasem's application]. Mr. Qasem's case is dismissed on the merits. In relation to Case No. UNRWA/DT/JFO/2023/104 [the decision to exclude Mr. Qasem], Mr. Qasem's appeal is dismissed, and the remainder of the impugned Judgment is hereby affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Qasem Qasem

Entity

UNRWA

Case Number(s)

2023-1851

Tribunal

UNAT

Registry

New York

Date of Judgement

7 Aug 2024

President Judge

Judge Sheha

Judge Sandhu

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Subject matter (ratione materiae)

Procedure (first instance and UNAT)

Selection decision

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Staff selection (non-selection/non-promotion)

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNRWA DIOS Guide to Conducting Investigations, 2021
- UNRWA DIOS Technical Instruction on Investigation Policy 01/2021

UNAT RoP

- Article 18.1

UNRWA Area Staff Regulations

- Regulation 4.3

UNAT Statute

- Article 8.3

UNRWA Personnel Directives

- Area Staff Personnel Directive No. A/4/Part II, Rev. 8/Section I

Related Judgments and Orders

2011-UNAT-110

2011-UNAT-174

2017-UNAT-780

2022-UNAT-1242

2014-UNAT-481

2017-UNAT-761