

# 2024-UNAT-1496, Mahmoud Mohamad Zeidan

## UNAT Held or UNDT Pronouncements

The UNAT found that the UNRWA DT had erred in law when it found that the applicable legal framework allowed the interview panel to conduct technical assessments of the candidates. However, the UNAT held that the procedural irregularity of the panel having held a second round of interviews of a purely technical nature, would not suffice to grant the appeal because the outcome of the recruitment process would have been the same.

The UNAT held that the UNRWA DT had not erred with regards to the Agency's failure to correctly apply gender parity rules. The UNAT found that gender parity had not been the only reason that supported the selection decision and the panel had also considered the overall assessment of the candidates' performance.

The UNAT observed that if the Agency had inexplicably filed equivalency determination forms for both candidates, this had been a superfluous procedure that was applied equally to both and had no impact on their chances for selection.

The UNAT held that the UNRWA DT had carried out a careful assessment of the evidence on record and arrived at a reasonable conclusion that the allegations of bias and discrimination, despite being supported by some evidence, were not proven by clear and convincing evidence.

The UNAT noted that the argument of a possible conflict between the members of the first interview panel was raised for the first time on appeal and, in any event, was not supported by any evidence.

The UNAT dismissed the appeal and affirmed the UNRWA DT Judgment, with Judge Colgan concurring.

## Decision Contested or Judgment/Order Appealed

A staff member contested a decision not to select him for the position of Chief Field Education Programme, Grade 20, Lebanon Field Office, UNRWA.

In Judgment No. UNRWA/DT/2023/045, the UNRWA DT dismissed the application on the merits. The UNRWA DT found that several facts supported the staff member's claim that the vacancy was readvertised with modified requirements in order to ensure the inclusion of another candidate in the longlist but that he had failed to meet his burden of showing that the recruitment was discriminatory or biased by clear and convincing evidence.

The staff member appealed.

## Legal Principle(s)

Administrative manuals and guides lack legal authority as they are not meant to create substantive rights or obligations. They are subject and subservient to regulations, rules and to contractual rights and obligations. Therefore, such issuances are not binding and cannot modify or supplement the rights and obligations specifically provided for under the relevant regulations, rules and personnel directives.

The Selection Policy provides that selection interviews are competency-based. This means that interview panels normally and essentially assess the competencies of the shortlisted candidates against the competencies required

for the advertised post. The only constructive interpretation of paragraph 38 of the Selection Policy is to allow the Agency to administer technical tests either to create the shortlist from the longlisted candidates, or before the interviews of the shortlisted ones.

Procedural irregularities shall result in the rescission of the contested decision only when the staff member had a significant chance of selection or promotion.

Not every error of fact would render the impugned Judgment defective. Rather, an error of fact must be of such significance that it must have led the first instance Tribunal to reach a manifestly unreasonable decision. Manifest unreasonableness could be found to occur when a finding of fact is entirely unsupported by the evidence, is speculative, or when it is established on excessive inferences. It is the appellant's burden to show that such error exists.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mahmoud Mohamad Zeidan

Entity

UNRWA

Case Number(s)

2023-1882

Tribunal

UNAT

Registry

New York

Date of Judgement

6 Dec 2024

President Judge

Judge Sheha

Judge Colgan

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discretionary authority

Bias/favouritism

Credibility assessment

Procedure (first instance and UNAT)

Interview

Standard of proof

Discrimination and other improper motives

Evidence

Staff selection (non-selection/non-promotion)

Applicable Law

UNAT Statute

- Article 2.1(e)

#### UNRWA Personnel Directives

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

#### Related Judgments and Orders

2017-UNAT-744

2015-UNAT-496

2011-UNAT-174

2011-UNAT-123

2011-UNAT-110