



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-818

**Kawamleh
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before: Judge Deborah Thomas-Felix, Presiding
Judge Dimitrios Raikos
Judge Sabine Knierim

Case No.: 2017-1107

Date: 22 March 2018

Registrar: Weicheng Lin

Counsel for Mr. Kawamleh: Self-represented
Counsel for Commissioner-General: Rachel Evers

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/026, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 19 June 2017, in the case of *Kawamleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mohammad Fayez Kawamleh filed the appeal on 18 August 2017, and the Commissioner-General filed an answer on 18 October 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... Effective 1 November 2006, the Applicant was employed by the Agency as a Project Manager Shelter at the Engineering and Construction Services Department (“ECSD”), Field Office Jerusalem, on a fixed-term appointment, Grade 14, Step 1.

... On 27 November 2015, the Agency published, internally and externally, a vacancy announcement for the post of Deputy Head of Field Logistics Officer (“D/HFLO”), Field Office Jerusalem, Procurement and Logistics Department, Grade 17. The Agency received a total of 51 applications, including the application of the Applicant.

... Effective 1 January 2016, the Applicant was appointed as a Construction Engineer at the ECSD, on a fixed-term appointment expiring on 31 March 2016, Grade 14, Step 9.

... By email dated 27 January 2016, the Human Resources Assistant invited seven candidates, including the Applicant, for a written test scheduled to take place on 2 February 2016.

... By email to the Head, Field Human Resources Office (“H/FHRO”), dated 3 February 2016, the Applicant raised issues regarding the written test. On 4 February 2016, another candidate for the post questioned the appropriateness of the written test for a senior position.

... By email to the Chief, Ethics Office (“CEO”) dated 18 February 2016, the Applicant complained about the recruitment process. On 21 February 2016, the CEO responded that the Ethics Office has no authority over a recruitment process, and that the Applicant should raise his concerns with the H/FHRO. Furthermore, the CEO

¹ Impugned Judgment, paras. 2-15.

recommended that he submit a request for protection against retaliation with the Ethics Office in the event he believed that he may have been the subject of retaliation.

... By email dated 24 February 2016, the Applicant complained to the Department of Internal Oversight Services (“DIOS”) with regard to the recruitment process. The Applicant offered that it was the same person who had prepared the test questions and the model answers, and then subsequently had scored the test too. Furthermore, the Applicant claimed that the test was tailored, and that the recruitment process was modified beforehand. He specified that if anyone looked at the test results, it would be obvious that the test was shared with certain individuals before the exam.

... Following the complaints, the H/FHRO cancelled the first written test.

... By email dated 29 February 2016, the Applicant was invited for another written test to take place on 3 March 2016. By email sent on the same day, the Applicant declined to take part in the second test noting that he had “no faith in our current written test process or its transparency”.

... On 11 March 2016, the Applicant sent another email to the DIOS referring to his previous email sent on 24 February 2016, and attaching two more documents.

... By email dated 28 March 2016, the Chief, Investigations Division, DIOS informed the Applicant that the DIOS would not undertake further action in relation to his complaint as there was no evidence that the initial test was anything other than a mistake and a new test had been issued with increased confidentiality and parameters.

... On 6 April 2016, by email to the Chief, Investigations Division, DIOS, the Applicant contested [his] decision.

... By email to the Director of Human Resources, dated 22 April 2016, the Applicant requested the review of “the decisions made by the HR-WB [Human Resources – West Bank] and the DIOS at HQ [Headquarters] Amman (“HQA”)”. The Agency did not provide a response.

... On 18 August 2016, (...) [an] application [contesting the Agency’s decisions “1) to manually include other candidates and overrule the computer’s automatic short-list for the post of Deputy Head of Field Logistics Officer; 2) to conduct the first written test without participation of the hiring department; 3) to subsequently cancel the first written test; and 4) to conduct a second written test for the same post”]^[2] was filed with the UNRWA Dispute Tribunal (...). The application was transmitted to the Respondent on 21 August 2016.

^[2] *Ibid.*, para. 1.

3. The UNRWA Dispute Tribunal rendered its Judgment on 19 June 2017, dismissing the application in its entirety. The UNRWA DT considered that Mr. Kawamleh had no standing to contest the Agency's decisions regarding the first written test because individual steps or findings in a selection process may only be challenged in the context of an appeal against the outcome of a selection process. The first selection exercise, however, was cancelled and thus never completed and there was no chance for selection for the position in question. With respect to the second selection process, the UNRWA DT found that Mr. Kawamleh was unable to contest the Agency's decision to conduct a second selection exercise for the same post as he himself had voluntarily decided not to participate in the second written test. The UNRWA DT further held that, while it had the power to clarify the scope of an application when necessary, there was no clear indication that Mr. Kawamleh, in his application, had sought judicial review of the Agency's decision to close his complaint to the DIOS about the first selection process.

4. As stated above, on 18 August 2017, Mr. Kawamleh filed an appeal with the Appeals Tribunal and on 18 October 2017, the Commissioner-General filed his answer.

5. On 4 December 2017, the Appeals Tribunal issued Order No. 303 (2017), denying a motion filed by Mr. Kawamleh seeking leave to file additional pleadings for lack of exceptional circumstances.

Submissions

Mr. Kawamleh's Appeal

6. Mr. Kawamleh submits that the Agency failed to adequately react to his requests for protection from retaliation and claims that he was subjected to premeditated discrimination. He argues that allegations of such "retaliatory acts" had already been outlined in his application and were thus properly before the UNRWA DT.

7. Mr. Kawamleh asserts that he is challenging decisions that directly affected his terms of appointment, security, safety and wellbeing and caused negative consequences.

8. Mr. Kawamleh requests the Appeals Tribunal to order compensation for moral and material damages that he claims were caused by the Agency and to "[r]einstate [his] reputation that was slandered by the Agency and [by] the act of improper and ambiguous termination".

The Commissioner-General's Answer

9. The Commissioner-General submits that Mr. Kawamleh's appeal fails to identify any of the grounds of appeal set out in Article 2(1) of the Statute of the Appeals Tribunal (Statute) and that he merely reargues his case. Moreover, Mr. Kawamleh introduces new elements for consideration, notably his separation following the expiration of his contract, that were not put forward at the UNRWA DT level and are, thus, inadmissible on appeal.

10. The Commissioner-General further argues that the UNRWA DT did not commit an error of fact or law which would require a reversal of the UNRWA DT Judgment. In particular, the UNRWA DT correctly identified the scope of Mr. Kawamleh's application, was cognizant of the relevant jurisprudence, and correctly concluded that Mr. Kawamleh had no standing to contest the first and second selection processes and that he did not seek judicial review of the decision to close his complaint.

11. Moreover, the Commissioner-General submits that the remedies sought by Mr. Kawamleh have no legal basis. In particular, the plea for moral and material damages was not before the UNRWA DT and therefore includes new elements, which may not be introduced for the first time on appeal. In any case, Mr. Kawamleh has not presented any evidence to support his compensation claim.

12. Based on the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

13. The UNRWA DT in its Judgment dismissed Mr. Kawamleh's application which contested the following decisions of the Agency: 1) to manually include other candidates and overrule the computer's automatic short-list for the post of D/HFLO; 2) to conduct the first written test without participation of the hiring department; 3) to subsequently cancel the first written test; and 4) to conduct a second written test for the same post.

14. At the outset, we observe that the issues relating to the conduct of the first test are of no relevance to this appeal and have no legal consequence. This is so because the first test and the proposed selection exercise were cancelled. We agree with the UNRWA DT that a selection process may only be challenged in the context of an appeal against the outcome of that

process.³ Simply put, since the selection exercise was cancelled, there was no decision for Mr. Kawamleh to contest. We therefore find that the UNRWA DT did not err in dismissing the first three grounds of his application.

15. With respect to the second test, which is the subject of the fourth ground of the claim, Mr. Kawamleh elected not to take the test. We agree with, and uphold, the finding of the UNRWA DT that Mr. Kawamleh was unable to contest the Agency's decision to conduct a second selection exercise for the same post due to the fact that he had decided and expressly stated that he would not participate in the second written test. As a result, the UNRWA DT did not err in finding that Mr. Kawamleh had no standing to contest the decision to conduct a second test after he had elected not to participate in the process.

16. We have examined all the grounds of Mr. Kawamleh's appeal and find them to be without merit. Since no illegality was found, there is no justification for the award of any compensation or moral damages. As this Tribunal has stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".⁴

17. In the circumstances, the appeal is dismissed in its entirety.

³ See *Ishak v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-152, para. 29.

⁴ *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40, and citations therein.

Judgment

18. The appeal is dismissed and Judgment No. UNRWA/DT/2017/026 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar