



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

Judgment No. 2018-UNAT-852

**Sarieddine
(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 John Murphy Judge Sabine Knierim
Case No.:	2018-1140
Date:	29 June 2018
Registrar:	Weicheng Lin

Counsel for Mr. Sarieddine:	Amer Abu-Khalaf, LOSA
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/2017/037, 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 November 2017, in the case of *Sarieddine v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mazen Sarieddine filed the appeal on 16 January 2018, and the Commissioner-General filed an answer on 19 March 2018.

Facts and Procedure

2. The following facts are taken from the UNRWA DT Judgment:¹

... On 15 July 2015, the Agency published, internally and externally, a vacancy announcement for the posts of Procurement and Logistics Clerk (“P&L Clerk”), Grade 8, in the Procurement and Logistics Department (“PLD”), Procurement Division, Lebanon Field Office (“LFO”). The objective of the vacancy announcement was to establish an employment roster for the posts of P&L Clerk at the LFO. [The vacancy announcement for the employment roster provide[d]:

RECRUITMENT PROCESS

The Recruitment process is based on the Agency’s strategy to obtain the best qualified and suitable employees through a competitive recruitment process. After the deadline for receiving applications, all applications will be reviewed by the Human Resources Office and the Hiring Department.

GENERAL INFORMATION

...

Where there are two or more equally qualified candidates, selection preference will normally be given to internal candidates, Palestine Refugees and candidates of the under-represented gender. If the post is a project funded post (this will be indicated in the vacancy), an internal candidate with a temporary-indefinite or fixed-term appointment selected for this post will not retain his/her current contractual status and entitlements in accordance with current letter of appointment and applicable Area Staff Rules. The Agency maintains the discretion to fill future vacancies for this position from the roster without re-advertising the vacancy.]^[2]

¹ Impugned Judgment, paras. 2-11 and 18-21.

^[2] *Ibid.*, para. 39.

... On 19 January 2016, the Interview Panel established an employment roster of five persons for the posts of P&L Clerk in order of priority. The Applicant was the third candidate recommended by the Interview Panel.

... Appointments to General Fund (“GF”) posts or project funded posts are both fixed-term appointments. However, GF posts provide more stability for staff members compared to project funded posts.

... The incumbent of one of the GF posts of P&L Clerk was on Special Leave Without Pay (“SLWOP”) from 1 July 2015 until 30 June 2016. By email dated 11 February 2016, the Head, Field Human Resources Office (“H/FHRO”) approved filling this post by a fixed-term appointment until the end of the incumbent’s SLWOP on 30 June 2016. [Given the availability of [this] post (...), an Administrative Officer at the PLD requested the appointment of a candidate to this post from the employment roster. Accordingly,]^[3] [e]ffective 23 February 2016, the Applicant was employed by the Agency as a P&L Clerk, Grade 8, Step 1, in the above-mentioned GF post with a fixed-term appointment expiring on 30 June 2016. [The Applicant was offered this post as the first and second-ranked candidates on the employment roster were already employed on GF posts of P&L Clerk until 30 June 2016.]^[4]

... In March 2016, the P&L Clerk on SLWOP submitted her resignation. Effective 1 April 2016, her resignation was accepted by the Agency. [Another GF post of P&L Clerk became vacant effective 1 July 2016 following the resignation of its incumbent].

... By email to the H/FHRO dated 18 March 2016, the Head, Field Procurement and Logistics Office (“H/FPLO”) proposed that the candidate ranked number one on the employment roster be offered the post temporarily encumbered by the Applicant following the resignation of the previous incumbent of the post.

... By email to the Human Resources Service Officer (“HRSO”) dated 10 June 2016, Mr. B. Y. [the fourth-ranked candidate on the employment roster] requested to be transferred to the vacant GF post of P&L Clerk. [Mr. B.Y. was appointed to the post through a transfer in application of UNRWA Field Technical Instruction 01/2016 (Lateral Transfers Initiated at the Request of Staff, Lebanon Field Office) (FTI 01/2016). The other GF post was filled by Mr. F.A., the first recommended candidate on the employment roster.]

... Prior to the expiration of the Applicant’s fixed-term appointment on 30 June 2016, by letter dated 24 June 2016, the Applicant was informed of the decision to reassign him to a project funded post of P&L Clerk, PLD, Procurement Division, LFO, effective 1 July 2016, without change in grade or salary level.

... On 25 July 2016, the Applicant sought review of the decision of 24 June 2016.

^[3] *Ibid.*, para. 34.

^[4] *Ibid.*

... On 30 August 2016, [Mr. Sarieddine filed an] application with the UNRWA Dispute Tribunal [against the Agency's decision to transfer Mr. B.Y. to a GF post of P&L Clerk in PLD, Procurement Division, LFO]. (...)

...

... By Order No. 073 (UNRWA/DT/2017) ("Order No. 073") dated 11 June 2017, the [UNRWA Dispute] Tribunal ordered the Respondent to clarify certain details with regard to the Applicant's appointment to a project funded post.

... On 7 July 2017, the Respondent filed a "Motion for Extension of Time" to comply with Order No. 073.

... By Order No. 087 (UNRWA/DT/2017) (...) dated 9 July 2017, the [UNRWA Dispute] Tribunal granted the Respondent's request for extension of time.

... On 20 July 2017, the Respondent submitted his response to Order No. 073. (...)

3. The UNRWA DT rendered its Judgment on 19 November 2017, dismissing the application in its entirety. It clarified that the scope of the case was limited to a challenge of the Agency's decision to appoint Mr. B.Y. to a GF post at the PLD effective 1 July 2016. On the merits, the UNRWA DT found that the Agency was entitled, under paragraph 2 of FTI 01/2016, to fill the concerned post by means of transfer of a current staff member, which represents an exception to the general principle that posts shall be filled through a competitive selection process. The UNRWA DT further considered that it was not within its remit to pronounce on the exercise of the Agency's discretion in deciding on the lateral transfers, unless the discretion was exercised arbitrarily or unlawfully. It held that the transfer in this case was not arbitrary or unlawful as the decision was taken in line with the LFO's practice under FTI 01/2016 to process transfer requests before rostered candidates and to prioritize candidates based on their seniority. Finally, the UNRWA DT found that even if Mr. Sarieddine's contention that "the selection process for the employment roster was corrupted and he was subjected to discrimination during the selection process for not being a Palestine refugee" was true, it would be "not only (...) inadequately supported by evidence but (...) also irrelevant to the impugned decision [to] transfer (...) Mr. B.Y. to a GF post of P&L Clerk".⁵

⁵ *Ibid.*, para. 46.

Submissions

Mr. Sarieddine's Appeal

4. Mr. Sarieddine submits that the UNRWA DT erred in fact and in law by deciding that the transfer of Mr. B.Y. was not arbitrary or unlawful and that Mr. Sarieddine had failed to establish otherwise. He takes issue with the review of Mr. B.Y.'s test results following the recruitment process for the employment roster for the P&L Clerk posts and he questions the eligibility of Mr. B.Y. who, "even after the revision (...) was not in the top 3 on the roster". In violation of UNRWA Area Staff Regulation 4.3, the Agency did not choose the most qualified candidate through a competitive process, which was disregarded by the UNRWA DT. He claims that FTI 01/2016 regarding transfer procedures was not applicable in this case because "the job was advertised and competition already took place". The UNRWA DT's position is contradictory in that it alludes to FTI 01/2016 and states that transfers take priority over the ordinary selection process but then continues to find that the candidates were prioritized fairly based on seniority.

5. Further, Mr. Sarieddine argues that the UNRWA DT failed to assess the evidence and therefore erroneously concluded that the selection process for the employment roster was not "corrupted" and that his allegations were irrelevant to the impugned decision to transfer Mr. B.Y. He claims that the UNRWA DT Judgment contained several factual errors, including the incorrect statements that Mr. F.A., the first-ranked candidate, had also requested a referral and that the roster consisted of five candidates instead of four.

6. In addition, Mr. Sarieddine asserts that the UNRWA DT failed to observe that there was unjustified delay in response to Order No. 073 from the Respondent.

7. In light of the foregoing, Mr. Sarieddine requests that the UNRWA DT Judgment be vacated.

The Commissioner-General's Answer

8. The Commissioner-General asserts that the UNRWA DT did not err in holding that the transfer was not arbitrary or unlawful and that Mr. Sarieddine had failed to establish otherwise. He argues that with respect to the review of Mr. B.Y.'s test results and his eligibility for the post, Mr. Sarieddine merely repeats arguments already put forward before the UNRWA DT. At any rate, the issue whether Mr. B.Y. should have been on the roster in the first place (eligibility) was

duly considered by the UNRWA DT, which correctly stated that this contention was irrelevant since Mr. B.Y. was appointed on the GF post following his request for transfer and not because he was a rostered candidate. With regard to whether the employment roster was established with four or five candidates, Mr. Saredidine fails to explain how the discrepancy affects the final decision of the case. Moreover, it was correct for the UNRWA DT to rely on FTI 01/2016 as the relevant instrument on transfers and Mr. Saredidine's contention on this point is misconceived.

9. The Commissioner-General further argues that the UNRWA DT did not err in its conclusion that the selection process for the employment roster was not corrupted and that the allegations of discrimination were irrelevant to the impugned transfer decision. In particular, Mr. Saredidine does not provide any arguments or evidence in support of his claim of discrimination or alleged corruption in the selection process.

10. In light of the foregoing, the Commissioner-General requests that the appeal be dismissed and the UNRWA DT Judgment be upheld.

Considerations

11. UNRWA Area Staff Regulation 4.3, together with FTI 01/2016, provide the basis for the lateral transfer of staff within the Agency. These two instruments empower the Agency to transfer staff and to fill posts by means of transfer of current staff members as an exception to the general principle that posts shall be filled through a competitive selection process.

12. We agree with the UNRWA DT and uphold its findings that the Agency was entitled, under the provisions of paragraph 2 of FTI 01/2016, to fill the concerned post by means of transfer of current staff members. The provision *inter alia* states that “[t]he filling of posts by transfer of existing staff represents an exception to the general principle that posts shall be filled through a competitive process”.

13. We also agree with, and uphold, the ruling that it was not within the remit of the UNRWA DT to pronounce on the exercise of the Agency's discretion in deciding on the lateral transfers, unless there is evidence that the discretion was exercised arbitrarily or unlawfully.

14. As stated in *Simmons*:⁶

... The jurisprudence of the Appeals Tribunal has been that the Administration has the power to restructure and reorganize its units and its departments to lend to greater efficiency. It is therefore not within the remit of the UNDT to pronounce on the exercise of this discretion, as in this case, to determine whether or not rostered candidates should be considered and other internal management issues. This can only be done if there is evidence before the Dispute Tribunal of arbitrary and unlawful exercise of the discretion. (...)

There is no evidence in the instant case to support the allegation of arbitrary and unlawful exercise of discretion by the Agency as it relates to the contested transfer decision.

15. Moreover, we find no evidence of the assertions made by Mr. Sarieddine that the selection process for the employment roster was corrupted and that he had been subjected to discrimination during the selection process.

16. For these reasons, we find no fault with the Judgment of the UNRWA DT.

⁶ *Simmons v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-624, para. 12.

Judgment

17. The appeal is dismissed and Judgment No. UNRWA/DT/2017/037 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar