



THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2019-UNAT-938

... On 26 September 2017, the first-selected candidate submitted her resignation for personal reasons. The Dean of the Faculty of Education Sciences and Arts (“FESA”) decided not to draw from the roster of pre-approved candidates for the post of Assistant Professor - English (Literature and Linguistics).

... On 16 November 2017, the Applicant requested review of the decision not to appoint him from the roster.

... On 31 December 2017, the application was filed with the UNRWA Dispute Tribunal. It was transmitted to the Respondent on 2 January 2018.

... On 1 February 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 4 February 2018.

... On 8 February 2018, the Applicant filed a motion to submit observations. The motion was transmitted to the Respondent on the same day.

... By Order No. 025 (UNRWA/DT/2018) dated 18 February 2018, the [UNRWA Dispute] Tribunal granted the Applicant’s motion.

... On 27 February 2018, the Applicant submitted his observations. The observations were transmitted to the Respondent on 28 February 2018.

... By Order No. 118 (UNRWA/DT/2018) dated 1 July 2018 (“Order No. 118”), the [UNRWA Dispute] Tribunal ordered the Respondent to submit information with respect to the number of students registered for English language courses in the FESA in the years 2015/2016, 2016/2017 and 2017/2018 with the relevant related official documentation.

... On 16 July 2018, the Respondent filed a motion for extension of time to submit the requested information. The motion was transmitted to the Applicant on 17 July 2018.

... By Order No. 131 (UNRWA/DT/2018) dated 19 July 2018, the [UNRWA Dispute] Tribunal granted the Respondent’s motion.

... On 31 July 2018, the Respondent filed a motion for further extension of time until 8 August 2018. The motion was transmitted to the Applicant on 1 August 2018.

... By Order No. 144 (UNRWA/DT/2018) dated 2 August 2018, the [UNRWA Dispute] Tribunal granted the Respondent’s motion.

... On 8 August 2018, the Respondent filed his response to Order No. 118. The [UNRWA Dispute] Tribunal transmitted the response to the Applicant on 14 August 2018, without the annexes, as these had been submitted to the [UNRWA Dispute] Tribunal on an ex parte basis.

... On 6 November 2018, the [UNRWA Dispute] Tribunal issued a Notice of Hearing for Tuesday 27 November 2018. On 16 November 2018, the Respondent

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taking up the role, she would still be teaching a course filled with students. In addition, the Dean testified that there had been several cancelled courses in general, but not specifically about the course in issue, namely the course from which the incumbent resigned. Thus, the Dean's testimonial evidence was irrelevant to whether the decision not to place him on the post was due to low student registration. The UNRWA DT failed to consider his testimony that students enroll in June or July so analysis as to whether there was low enrollment should have been done prior to placing the incumbent in the post and this disproves the Dean's explanation that they realized there was low enrollment when the incumbent resigned. Thus, the UNRWA DT erred in not finding the Dean's testimony untruthful.

7. Notwithstanding the enrollment, the Higher Education Accreditation Commission stipulates a minimum number of teachers with Ph.D.s in English Literature or Linguistics must be present and the Agency was not compliant as Ms. S.J., the Dean's cousin, did not have a Ph.D.

8. Based on the foregoing, Mr. Alhawi requests rescission of the administrative decision, his appointment to the post, compensation for moral damages, compensation for material damages, and compensation for lost salary.

The Commissioner-General's Answer

9. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety as Mr. Alhawi has not set forth any of the grounds of appeal under the Appeals Tribunal's Statute. He has failed to meet his burden to establish an appealable error. The appeal raises new elements and pleas that were not put forth before the UNRWA DT, such as his argument that the UNRWA DT did not consider the "principle of priority" for internal ca nunternal cae of d14(rl).7(re ternal.c

ul. . TD-.0T.3(nc21 Tw[(2787ibunal)-5.4(to d)5.8t,)5.

10. The UNRWA DT did not commit any procedural errors. Regarding Mr. Alhawi's contention that the UNRWA DT erred in not transmitting him the evidence submitted by the Agency on an ex parte basis, namely, the student registrations for English language courses for three years, the Commissioner-General submits that these documents were submitted ex parte due to the confidential and sensitive nature of the information therein, which included student details. The UNRWA DT gave Mr. Alhawi an opportunity at the hearing to review the documents and make submissions thereon. Further, the UNRWA DT explained in its Judgment the conclusions it made based on this evidence. Mr. Alhawi's submissions as to the number of students and classes were not previously submitted into evidence nor were they supported by the record. As such, the Appeals Tribunal should ignore these submissions. As to the hearing, the UNRWA DT clarified that only the testimony relevant to this case would be considered. Mr. Alhawi's assertion that the Dean "breached his oath" was based on his misrepresentation of the Dean's testimony.

11. Lastly, the Commissioner-General submits that there is no legal basis to rescind the contested decision. Mr. Alhawi has not proffered any evidence in support of his pleas for compensatory and moral damages and recalls this Tribunal's jurisprudence that no award shall be given when there is no harm suffered.

Considerations

12.

15. We further find that Mr. Alhawi has not met the required burden to be heard on appeal, namely he has failed to identify any of the grounds of appeal prescribed by Article 2(1) of the Appeals Tribunal Statute. He has also raised new arguments on appeal with respect to priority consideration and facts on enrollment, which were not argued before the UNRWA DT; as a result, he is estopped to do so on appeal.³

16. In the circumstances, we affirm the Judgment of the UNRWA DT.

³ Staedtler v. Secretary-General of the United Nations , Judgment No. 2015-UNAT-547.

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