



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-771



Al-Mussader
(Appellant)

v.

Commissioner-General

Date: 14 July 2017

Registrar: Weicheng Lin

Counsel for Mr. Al-Mussader: Jamila Al-Abbasi, LOSA

Counsel for Commissioner-General: Rachel Evers

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concluded. The Applicant was also informed that he had the right to re-submit his request for decision review once the selection process had been concluded.

... On 22 June 2015, the Advisory Committee on Human Resources recommended the selected candidate for appointment to the post of H/FHRO/WB. The recommendation was confirmed by the Commissioner-General on the same day.

... On 2 August 2015, the Applicant filed his application with the UNRWA [DT]. The application was transmitted to the Respondent on the same day.

3. On 8 December 2016, the UNRWA DT issued the impugned Judgment pursuant to which it dismissed the application on the merits. It found that Mr. Al-Mussader had not contested “that before being hired by the Agency he had never worked for an international organization outside of his home country”;³ that his Personal History Form (PHF) did not reflect his experience outside of his duty station; and, that he had not claimed three years of experience outside of his duty station. The UNRWA DT concluded that the Agency, thus, could not have considered him as having worked outside his home country at the international level. It also rejected his claims regarding a previous P-5 selection process on the grounds *inter alia*, that each selection process had to stand on its own and being shortlisted for an international position once did not give him an entitlement to be shortlisted in a subsequent process.

4. As noted above, Mr. Al-Mussader filed the appeal on 9 January 2017, and the Commissioner-General filed his answer on 13 March 2017.

Submissions

Mr. Al-Mussader’s Appeal

5. The UNRWA DT erred in fact, law and procedure when it concluded that Mr. Al-Mussader did not have the requisite international experience and that the Agency had followed the applicable procedures. Mr. Al-Mussader should have been included in the Tranche 1 list of candidates as he met the required qualifications and, as an internal candidate, should have been given priority in the selection process.

6. The UNRWA DT erred by not considering Mr. Al-Mussader as having met the international experience requirement. Mr. Al-Mussader met the requirement by virtue of his secondment and other experience outside of his duty station, in accordance with the

³ *Ibid.*, para. 23.

International Personnel Staff Directive No. 1/104.2/ Rev.3, para. 65. Although he did not include this information in his PHF, the Agency had access to this information through the recruitment system and its own files. The Tribunal erred by not finding discriminatory and arbitrary as applied to local staff the vacancy announcement's requirement that international experience was satisfied only by experience outside one's home country.

7. The UNRWA DT erred when it adopted the Commissioner-General's arguments and, further, when it "produced a new argument ... in support of the [Commissioner-General's case]". Mr. Al-Mussader's international experience had been previously accepted for a P-5 selection

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... All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

...

... There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

17. The UNRWA DT correctly applied the foregoing principles in considering Mr. Al-Mussader's challenge to the selection process. As discussed in more detail below, the UNRWA DT did not make any errors of law or fact in dismissing his application.

20. In the case at hand, the vacancy announcement required:

Three years of relevant experience in a large governmental, international or commercial organization at the international level outside one's home country, including experience in developing countries.

21. With respect to the required international experience for the post, the UNRWA DT found as follows:⁶

... It is not contested by the Applicant that before being hired by the Agency he had never worked for an international organization outside of his home country.

24. The UNRWA DT relevantly opined:⁷

... From [International Staff Personnel Directive I/104.2/Rev.3, para. 27.], it is clear that the Hiring Director is entitled to invite only Tranche 1 candidates for an interview. The Applicant claims that he should have been categorised as a Tranche 1 candidate, as he meets all the requirements of the post as set out in the vacancy announcement, and specifically since he has worked in the Agency's Compensation and Management Services Division, Department of Human Resources at HQ (G) since February 1998, and is presently the Head of the Section.

25. The Commissioner-General argues that the UNRWA DT's reasoning, based on the requirements set out in the vacancy announcement, was correct in that paragraph 27 of International Staff Personnel Directive I/104.2/Rev.3 provides that the long list is created based on an initial assessment of the candidates' academic qualifications and working experience as set out in the vacancy announcement. Even assuming *arguendo* that Mr. Al-Mussader's experience outside his duty station qualified as international experience, it remains as correctly found by the UNRWA DT that Mr. Al-Mussader did not reflect in his PHF that he worked as OiC in different fields of operation nor did he claim that he had been appointed as OiC outside Gaza for a period of three years.

26. We agree with the Commissioner-General. A plain reading of paragraph 27 of International Staff Personnel Directive I/104.2/Rev.3 supports the finding of the UNRWA DT that the selection exercise should be based on the assessment of the candidates' academic qualifications and working experience as set out in the vacancy announcement. Accordingly, the UNRWA DT's ruling that the Agency could not have considered Mr. Al-Mussader as having met the vacancy announcement's explicit requirement (i.e., of "three years of relevant experience in a large governmental, international or commercial organization at the international level outside[] one's home country" such that he would be eligible for the post in question) is in compliance with the above mentioned paragraph 27 of International Staff Personnel Directive I/104.2/Rev.3.

⁷ *Ibid.*, para. 21.

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of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.⁸

32. It is obvious that Mr. Al-Mussa der was not satisfied with the UNRWA Dispute Tribunal's decision. He has failed, however, to demonstrate any error in the UNRWA DT's finding that the Agency's decision not to select him resulted from a valid exercise of its discretionary power and was not tainted by improper motives or otherwise unlawful. He merely voices his disagreement with the UNRWA DT's findings and resubmits his submissions to this Tribunal. He has not met the burden of proof of demonstrating an error in the impugned Judgment such as to warrant its reversal.⁹

33. In that vein, Mr. Al-Mussader contends that the UNRWA DT erred in finding him lacking the required international experience in the material P-4 selection process, though this experience had been previously accepted for a P-5 selection process, for which he was

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