



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

Judgment No. 2017-UNAT-789



**Barakat
(Appellant)**

v.

Commissioner-General

Date: 27 October 2017

Registrar: Weicheng Lin

Counsel for Mr. Barakat: Self-represented

Counsel for Commissioner-General: Rachel Evers

JUDGE SABINE KNIERIM, PRESIDING.

Submissions

Mr. Barakat's Appeal

8. Mr. Barakat submits that the UNRWA DT erred by refusing to hear the testimony of the CFEP/J as requested.
9. He further contends that the UNRWA DT erred by failing to consider or scrutinize the Circular. In particular, there is no indication in the Circular that internal transfers should take precedence over external ones. Rather, it is apparent from paragraph 5 of the Circular that the more senior candidate should be given priority.
10. Moreover, he asserts that the UNRWA DT “erred by accepting the [Commissioner-General’s] arguments and not at all considering [Mr. Barakat’s] arguments”.
11. Based on the foregoing, Mr. Barakat requests that the Appeals Tribunal vacate the UNRWA DT Judgment and award him compensation for material, moral and psychological damages. He further requests compensation for financial expenses incurred as a result of the Agency’s failure to transfer him and he asks to be transferred to Azmi Mufti Elem. B/S 1.

The Commissioner-General's Answer

12. The Commissioner-General submits that the appeal is not well-founded on any of the grounds set out in Article 2(1) of the Statute of the Appeals Tribunal (Statute). In accordance with the Appeals Tribunal’s well-established jurisprudence, it is not sufficient for an appellant to simply state that he disagrees with the outcome of the impugned judgment or to repeat the arguments submitted before the first instance tribunal.
13. To the extent that Mr. Barakat may be contending that the UNRWA DT committed an error of procedure by refusing to hear testimony of the CFEP/J, this contention is without merit as the UNRWA DT correctly exercised its broad discretion in the management of cases under Articles 11 and 14 of the UNRWA DT Rules of Procedure vested in it by the Appeals Tribunal’s jurisprudence.
14. Furthermore, the Commissioner-General claims that there is no basis for Mr. Barakat’s criticism that the UNRWA DT simply accepted the Commissioner-General’s arguments without considering his. Rather, “[a] dispassionate reading of the judgment reveals that the crux of

[Mr. Barakat's] contentions [in particular regarding his interpretation of paragraph 5 of the Circular] were reviewed and dismissed by the UNRWA DT".

15. The Commissioner-General asserts that the Judgment of the UNRWA DT was, as a matter of law or fact, free of error. The UNRWA DT reviewed the applicable legal instrument, namely the Circular, and correctly held that the Agency was in conformity with the regulatory framework and that its practice was reasonable.

16. As to the remedies sought by Mr. Barakat, the Commissioner-General contends that they have no legal basis. Specifically, it is not the role of the Tribunals to substitute their own decision for that of the Administration and therefore, Mr. Barakat's plea to be transferred to Azmi Mufti Elem. B/S 1 is untenable at law.

17. In light of the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Preliminary issue

18. Mr. Barakat requests an oral hearing [D3.7(ise91.2fn o.8(h)-6. oral)T4 1 Tf10.98l. TwCsn 8l. TwCsn ec

Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion of the first instance tribunal in the management of its cases.⁴

24. The UNRWA DT's interpretation and application of the Circular is free of legal or factual errors. In relevant parts, the Circular reads as follows:⁵

2- A- Internal transfer shall mean transfer within the same complex, for example the transfer from a school to another in Al Baqa'a Complex is considered an internal transfer, while external transfer shall mean a transfer from a complex to another, whether in the same region or a different region, for example, a transfer from a school in Al Baqa'a Complex to a school in Al Nuzha Complex shall be considered an external transfer.

...

C- A person wishing to transfer from the current school thereof shall carefully examine the transfer application and precisely provide his preferences, which shall not exceed eight preferences. In case the transfer request is only "external", the total number of preferences shall not exceed eight. In case the sought transfer is external and internal, total preferences shall not be more than eight, four of which as maximum shall be internal transfer. Only one application shall be submitted, whether for internal or external transfer, noting that the principal/assistant principal submitting an application for internal transfer (i.e., within the same complex) may specify the name of his desired school, as for external transfer, the same shall only provide the name of the complex of his preference.

...

5- [T]he employment commencement date of the principal/assistant principal in the Complex shall be used when effecting an internal or external transfer. Where two or more principals/assistant school principals have the same date of employment in the complex, the date of starting employment at the complex shall be used. If they have the same date-, the date of appointment in the Agency shall be the reference date, and in case such date was the same, priority in transfer shall be decided by lot drawing.

25. Under the Circular, the Administration was allowed to deny Mr. Barakat's request to be transferred to Azmi Mufti Elem. B/S 1 in Al Houson School Compound. Mr. Barakat's understanding of paragraph 5 of the Circular is erroneous. It is true that this paragraph does not expressly state that internal transfers should take precedence over external ones. However, the provision does not stand alone but has to be read together with paragraph 2 C

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of the Circular of which the last sentence clearly states “that the principal/assistant principal submitting an application for internal transfer (i.e., within the same complex) may specify the name of his desired school, as for external transfer, the same shall only provide the name of the complex of his preference”. As external candidates (like Mr. Barakat) are only allowed to provide the name of the compound to which they wish to be transferred, a competition between internal and external candidates for a specific school can never occur. Consequently, under the Circular, the Administration only had a duty to consider Mr. Barakat’s wish to be transferred to a certain compound but not his wish to be transferred to a certain school located in that compound.

26. With regard to Mr. Barakat’s request for compensation, we note that since no illegality can be found, there is no justification for the award of any compensation. As this Tribunal held in *Antaki*,⁶ *Oummih*,⁷ and *Nwuke*,⁸ no compensation can be granted in the absence of a breach of the staff member’s rights or administrative wrongdoing in need of repair.

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Judgment

27. The appeal is dismissed and Judgment No. UNRWA/DT/2017/005 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Raikos

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar