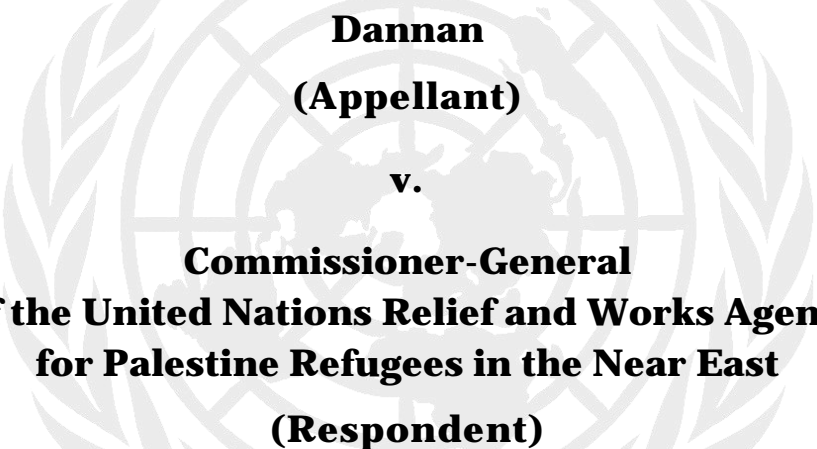




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-340



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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Mary Faherty Judge Rosalyn Chapman
Case No.:	2012-377
Date:	28 June 2013
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Lance Bartholomeusz

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mohammed Dannan against Judgment No. UNRWA/DT/2012/039, rendered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Dispute Tribunal (UNRWA DT) on 27 August 2012 in the case of *Dannan v. Commissioner-General of UNRWA*. Mr. Dannan appealed on 9 September 2012, and the Commissioner-General answered on 14 December 2012, having received an extension of the statutory time limit from the Appeals Tribunal pursuant to Order No. 118 (2012).

Facts and Procedure

2. Mr. Dannan entered the service of UNRWA on 11 January 1984, as a Senior Clerk, grade 8, in the Syria Field Office. At the time of the events that gave rise to this case, he held the position of Field Administrative Services Officer, grade 14.

3. Between May 2006 and January 2009, UNRWA issued a series of internal/external vacancy notices for the grade 17 post of Field Personnel Officer (FPO). The vacancy notices set out a list of “Minimum Qualifications”, but also included a section entitled “Equivalency”, which stated “[c]andidates with an equivalent combination of relevant academic qualifications, professional training and progressive work experience may also be considered”. Due to a lack of qualified candidates, the position was advertised a total of six times but, finally, two internal candidates (the selected candidate and Mr. Dannan) and three external candidates were shortlisted and sat a written technical test. The internal candidates passed the test (Mr. Dannan with 65% and the selected candidate with 75%) and were subsequently interviewed.

4. The Interview Panel concluded that Mr. Dannan did not meet the required profile for the post and unanimously recommended the selected candidate for appointment to the post of FPO at grade 16 (not 17, as advertised). The Director of UNRWA Affairs, Syria, approved an Equivalency Determination Form and the recruitment of the selected candidate. Mr. Dannan was informed he had been unsuccessful on 13 July 2009. He responded two days later, requesting information about the selection criteria used in the selection process, specifically the qualifications and experience required, and then entered into an exchange of correspondence with the Administration on this matter, including, in particular, the “equivalency” determination. He filed an appeal with the Area Staff Joint

Appeals Board on 15 September 2009 and his case was subsequently transferred to the UNRWA DT.

5. In its Judgment No. UNRWA/DT/2012/039, the UNRWA DT rejected Mr. Dannan's claim that he had been discriminated against, finding he had "produced not a shred of evidence to back up [his] claim of favouritism" towards the selected candidate, let alone the required "clear and convincing evidence", and had thus failed to prove his burden: "It is not enough merely to allege favouritism and yet produce no cogent evidence, arguments or submissions in support thereof." In contrast, the UNRWA DT considered that UNRWA had "produced a detailed account of the various unsuccessful attempts at recruiting a suitable candidate and the process and procedural steps by which a decision was taken to appoint the successful candidate". Accordingly, the UNRWA DT concluded that "there was no procedural impropriety, favouritism or any other kind of bias or prejudice that infected the selection process and the decision to appoint the successful candidate", and dismissed Mr. Dannan's application.

Submissions

Mr. Dannan's Appeal

6. Mr. Dannan submits that the decision not to select him for the position in question was unfair.

7. He claims that he was better qualified than the selected candidate and that, moreover, the selected candidate did not meet the minimum qualifications as set out in the vacancy notice.

8. Mr. Dannan requests the Appeals Tribunal to reverse the UNRWA DT's Judgment and to order his appointment to the position, as well as to grant him compensation for moral and financial loss.

The Commissioner-General's Answer

9. The Commissioner-General submits that Mr. Dannan does not assert any valid grounds for his appeal, as required by Article 2(1) of the Special Agreement between the United Nations and UNRWA. Specifically, the Commissioner-General notes that Mr. Dannan merely reiterates the facts as set out in his previous application before the UNRWA DT.

10. The Commissioner-General contends that the UNRWA DT made no error as a matter of law in finding that Mr. Dannan produced no cogent evidence supporting his claims of favouritism.

11. The Commissioner-General requests the Appeals Tribunal to reject Mr. Dannan's appeal.

Considerations

12. In support of his appeal, Mr. Dannan simply repeats the facts which he had placed before the UNRWA DT and then invites the Appeals Tribunal as follows: "I leave it to your good selves to judge the level of professionalism and fairness in which the selection process for the ... vacancy was carried out."

13. Mr. Dannan's appeal is not based on any of the grounds prescribed in Article 2(1) of the Special Agreement between the United Nations and UNRWA, by virtue of which the Appeals Tribunal has jurisdiction to hear UNRWA appeals, in that he has not alleged that the UNRWA DT has: (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

14. It is not sufficient for Mr. Dannan to state that he disagrees with the UNRWA Dispute Tribunal's findings of fact and to repeat the arguments submitted before that Tribunal, as the UNRWA Dispute Tribunal has a broad discretion to determine the weight to be attached to the evidence before it.¹ The Appeals Tribunal has previously emphasized that the appeals procedure is of a corrective nature and is thus not an opportunity for a party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.²

15. We are satisfied that the UNRWA DT properly discharged its duty to examine whether the procedure laid down in the applicable staff regulations and rules had been followed and

¹ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

² *Chrichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

whether Mr. Dannan had been given fair and adequate consideration.³ The UNRWA Dispute Tribunal found that the Commissioner-General had shown that Mr. Dannan's candidature had been given full and fair consideration. The UNRWA Dispute Tribunal then correctly placed upon Mr. Dannan the onus of showing by clear and convincing evidence that he had been denied a fair chance of being promoted. In this regard, the UNRWA DT found that Mr. Dannan had "produced not a shred of evidence to back up the claim of favouritism",⁴ nor had he produced any evidence at all that the selection process and the decision to appoint the successful candidate were tainted by bias and improper motives. We agree with the UNRWA Dispute Tribunal's observation that it was not enough for Mr. Dannan "merely to allege favouritism and yet produce no cogent evidence, arguments or submissions in support thereof".⁵

16. We find that the UNRWA Dispute Tribunal was entitled to decide on the evidence before it that "there was no procedural impropriety, favouritism or any other kind of bias or prejudice that infected the selection process and the decision to appoint the successful candidate".⁶

17. Mr. Dannan has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision.

18. Accordingly, we find that there is no merit in this appeal and it cannot succeed.

Judgment

19. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

³ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

⁴ Judgment No. UNRWA/DT/2012/039, para. 35.

⁵ *Ibid.*, para 36.

⁶ *Ibid.*, para. 40.

Original and Authoritative Version: English

Dated this 28th day of June 2013 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Chapman

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar