



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

Judgment No. 2019-UNAT-964

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Kanwaldeep Sandhu
Case No.:	2019-1263
Date:	25 October 2019
Registrar:	Weicheng Lin

Counsel for Ms. Mahmoud:	Amer Abu-Khalaf
Counsel for Commissioner-General:	Michael Schoiswohl

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Raghda Idris Mahmoud, Head of the Teacher Development and School Empowerment Unit at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), challenged her non-selection to the position of Chief, Teaching and Learning Division before the UNRWA Dispute Tribunal (UNRWA DT), which rendered Judgment No. UNRWA/DT/2019/017, dismissing her application on grounds the selection process was lawful. This Tribunal affirms the impugned Judgment for the reasons herein.

Facts and Procedure

2. Ms. Mahmoud was employed by the Agency on a fixed-term appointment, Grade 15, as General Education Specialist, Education Administration and Supervision at the Headquarters in Amman (HQA) since 19 September 2007. From 1 December 2011, her post was reclassified to the post of Teacher Development and School Empowerment Advisor, Grade 16. She was promoted to the post of Head, Teacher Development and School Empowerment Unit, Grade 18, Step 3 effective 1 March 2012.

3. On 11 October 2016, Ms. Mahmoud was informed that the Department of Internal Oversight Services was conducting an investigation into allegations that she might have engaged in misconduct. However, on 12 June 2017, she was informed that the Director of Human Resources had decided not to impose any disciplinary measures on her.

4. On 1 June 2017, the Agency published, internally and externally, a vacancy announcement for the post of Chief Teaching and Learning Division (CT&LD), HQA, Grade 20. Ms. Mahmoud applied for the position. The Agency received 76 applications for the vacancy. Five candidates, including Ms. Mahmoud, were short-listed and invited for a written test on 24 July 2017. Thereafter, Ms. Mahmoud and two other candidates were invited for a personal interview on 24 August 2017.

5. Ms. Mahmoud was interviewed by an interview panel comprised of the Director of Education Department (the DED), the Deputy Director of Education Department (the D/DED), the Deputy Director of Planning Department, the Deputy Director of UNRWA Operations (Programmes), Jordan and the Acting Human Resources Officer, Recruitment as *ex-officio* member. The interview panel unanimously recommended one of the other two candidates to be appointed to the post of CT&LD. It also concluded that Ms. Mahmoud

met the requirements of the post and recommended that she be the second ranked candidate should the first ranked candidate decline the offer.

6. The interview panel recorded that Ms. Mahmoud “had a good interview performance but not exceptional”. However, its assessment of Ms. Mahmoud was mostly positive and complimentary. The interview panel noted that Ms. Mahmoud was well-prepared for the interview and her responses were structured and drew on her experience of playing a key role in the professional development program of the education reform initiative. It remarked favourably that Ms. Mahmoud “also demonstrated sound understanding of the impact of UNRWA class formation issues on education programme and was able to talk about steps she could take for the capacity development of teachers”. It added that Ms. Mahmoud “displayed that she had good planning and organization skills necessary with regard to the identifying and follow up on capacity development needs of the Strategic Support Unit (SSU) and talked of field and HQ dynamics”.

7. The interview panel’s decision not to recommend Ms. Mahmoud but to favour the successful candidate was apparently premised on the criterion of strategic vision. In relation to Ms. Mahmoud the interview panel’s assessment stated:

The panel felt however that there was limited strategic vision with regards to the role of this post within the new structure of the education focused on the teacher development aspect of the role, rather than the management of teacher development, inclusive education and curriculum which the post requires ... Consequently, and whilst the panel felt that the candidate met the managerial competencies related to the post, there was consensus that she had not demonstrated strategic vision and leadership that was required for the successful impact of the new structure overall on the UNRWA education programme.

8. The interview panel’s assessment of the successful candidate, as most relevant, was as follows:

The candidate also highlighted all the core areas of managing a complex process involving multiple stakeholders with a strong and substantive example which clearly demonstrated a strategic, operational and multi-dimensional approach in managing and leading ...The candidate also gave a comprehensive, strategic, and insightful response to the technical question which went beyond the programmatic issues of the EP, demonstrating technical and strategic understanding of the class formation exercise and neutrality sensitivities ... She demonstrated excellent analytical skills and gave a coherent and strategic response to

the measurement of key indicators of the education programme. Overall, the panel agreed that the candidate exceeded with regard to her strategic vision.

9. The Agency set out the rationale of the non-selection of Ms. Mahmoud in its reply filed with the UNRWA DT as follows:

On 24 August 2017, [Ms. Mahmoud] was interviewed by a properly constituted [i]nterview [p]anel comprised of the Director of Education, Deputy Director of Education, Deputy Director of Planning, and the Deputy Director of UNRWA Operations (Programmes), Jordan Field Office. [Ms. Mahmoud] and the successful Candidate were assessed against the following key competencies: Managerial Competency –Deciding and Initiating Action, Managerial Competency – Leading and Supervising; Applying Technical Expertise; Analyzing and Planning; and Organizing. In its assessment of the Applicant, the [i]nterview [p]anel noted [Ms. Mahmoud’s] strong points: She came across as a solid and measured professional with breadth of UNRWA experience in her area of expertise – the professional development of teachers and demonstrated sound managerial skills with regard to taking a decision on a complex action, drawing from her experience in contributing towards the quality assurance for the Education Programme (ED). The panel also noted that her performance “fell down due to her failure to explain how she would apply her competencies and experience to the role she was interviewing for”. The panel unanimously concluded that [Ms. Mahmoud] had not demonstrated strategic vision and leadership that was required for the successful impact of the new structure overall on the UNRWA [ED]. The panel concluded that [Ms. Mahmoud] met the requirements of the post and recommended her to be appointed to the post of CT&LD should the first recommended candidate decline the offer.

10. On 12 October 2017, the Commissioner-General approved the appointment of the first recommended candidate. Ms. Mahmoud was informed of the outcome of the recruitment process for the post of CT&LD by letter dated 16 October 2017. On 29 October 2017, she submitted a request for decision review. The Deputy Commissioner-General affirmed the decision on 7 December 2017.

11. On 30 January 2018, Ms. Mahmoud filed an application with the UNRWA DT challenging the decision on various grounds. She alleged *inter alia* that: i) the interview panel was not lawfully comprised in accordance with the Agency’s framework; ii) she was not evaluated fairly in that the written test was not graded in accordance with the appropriate guidelines and in the interview she was asked different questions than the other candidates; iii) she was unlawfully assessed on a criterion (strategic leadership) which was not specified as one of the required

competencies in the vacancy announcement; and iv) the interview panel was biased against her due to the disciplinary investigation against her.

12. The UNRWA DT dismissed Ms. Mahmoud's application on the ground that she had failed to establish by clear and convincing evidence that the decision not to select her for the post was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity. In particular, the UNRWA DT found: i) the interview panel was lawfully comprised in accordance with the Agency's framework; ii) there was no irregularity regarding grading of the written tests as her suitability was reviewed based on her performance at the interview stage; iii) the claim that the interviewers asked the candidates different questions was unsupported by the evidence; and iv) her allegation of bias was unsubstantiated and belied by her selection as the second ranked candidate. The UNRWA DT made no findings regarding the alleged reliance upon an unspecified criterion and did not deal with other allegations made by Ms. Mahmoud that she had been insulted by the DED in January 2017.

13. Ms. Mahmoud filed an appeal on 22 May 2019 with this Tribunal. The Commissioner-General filed an answer on 22 July 2019.

Submissions

Ms. Mahmoud's Appeal

14. Ms. Mahmoud contends that the UNRWA DT erred in not granting her an oral hearing and generally that the UNRWA DT erred in fact and law in dismissing her application.

15. Ms. Mahmoud maintains that the UNRWA DT failed to consider that the DED had promised her on several occasions that she would be promoted but had to wait for restructuring. Following the restructuring she was not promoted as promised. Ms. Mahmoud further maintains that the UNRWA DT ignored evidence of a history of bias against her from the DED, including the incident where the DED publicly harassed her at a workshop with other colleagues present, which resulted a few days later in her suffering a serious medical condition.

16. The UNRWA DT ignored proof that she was asked different questions than the other candidates as proof of this was in the interview report and her submission that the DED admitted this to her in the presence of two witnesses. In addition, the written test was supposed to be

graded by at least one person from a department other than the hiring department, but the corrector was from the Education Department. The UNRWA DT erred in finding the written test was not considered as it ignored the decision review from the Deputy Commissioner-General which stated that “the selected candidate was evaluated to have the highest scores amongst the short-listed applicants”.

17. Also, the UNRWA DT failed to consider evidence that the selected candidate had the same final rating in all of the five competencies assessed during the interview, but a new criterion was established during the interview without transparency as the competency in “field experience” was not published in the vacancy announcement. This new criterion, she maintains, was added to cater to the selected candidate’s experience.

18. The UNRWA DT also failed to consider that the Agency did not follow the criterion set forth in the vacancy announcement, which gave priority to internal candidates from the duty station, which was a criterion that supported her candidacy.

19. As a result of these contentions, Ms. Mahmoud requests the Appeals Tribunal to reverse the Judgment and order the Agency to reinstate her in the post and compensate her for “additional duties”, as well as moral and financial damages.

The Commissioner-General’s Answer

20. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety and uphold the UNRWA DT’s Judgment. With respect to Ms. Mahmoud’s claim that the UNRWA DT should have held a hearing, the Commissioner-General points out that Ms. Mahmoud does not make any specific allegations as to how the UNRWA DT did not properly exercise its discretion in this regard.

21. The Commissioner-General submits that the facts Ms. Mahmoud claims were ignored by the UNRWA DT such as her medical issues, the restructuring of the department, and the workshop incident, were not relevant to the issues.

22. As for Ms. Mahmoud’s claim that the interview panel asked her different questions, this issue was addressed by the UNRWA DT which found that there was no evidence to support her claim.

23. With regard to the questions relating to field experience and strategic leadership, the Commissioner-General points out that the incumbent of the post would be required to provide strategic and technical guidance to education staff in the field, thus, this was a legitimate and proper question to pose during the interviews.

24. As to Ms. Mahmoud's contention that the UNRWA DT ignored the criterion of internal candidate priority, the selected candidate was also an internal candidate who had a stronger interview performance and was thus determined the best candidate.

25. Lastly, the contention that the UNRWA DT did not consider an alleged history of bias against her by the DED was not correct as the UNRWA DT explicitly found that the allegations were unsupported by the evidence. There was, moreover, no evidence that the DED unduly influenced the selection decision to her detriment. The related issue concerning the composition of the interview panel, namely, that the interview panel contained the DED and the D/DED who were both biased against her, the Commissioner-General contends, was equally unsustainable. The claim that the D/DED was also biased against her was raised for the first time on appeal.

26. As for her request for compensation for "additional duties", this was not an issue brought before the UNRWA DT and may not be brought for the first time on appeal.

Considerations

27. Ms. Mahmoud's first complaint is that the decision of non-selection was tainted by "procedural irregularity and bias". The complaint lacks particularity, but the application read as a whole indicates that Ms. Mahmoud objected to the DED being involved in the process. In her appeal, she also for the first time objects to the D/DED's participation in the interview panel. She did not object to their participation before or during the interview. The complaints of bias and procedural irregularity were also not raised in Ms. Mahmoud's request for decision review. However, on a conspectus of all the documentation, it is clear that Ms. Mahmoud believes that the DED and D/DED were prejudiced against her on account of past difficulties and tensions between them. These problems arose out of Ms. Mahmoud's complaints about work overload in June 2015, her attempts to have her post upgraded, the disciplinary matter, and the incident at a workshop in January 2017 where Ms. Mahmoud felt insulted by the DED. In her view, on this basis, the DED and D/DED ought not to have been members of the interview panel.

28. The Agency contends that apart from mere allegations, no evidence was put forward in support of the contention that the interview panel was biased. The mere fact that the DED and the D/DED participated in the proceedings, the Agency argued, was insufficient to raise the specter of bias. Moreover, the fact that Ms. Mahmoud was found suitable and actually recommended for the position as a second ranked candidate, it maintained, belied the allegations of bias.

29. The UNRWA DT held that the presence of the DED and D/DED on the interview panel did not offend the Agency's regulatory framework. It referred to paragraph 69 of Area Staff Personnel Directive No. PD/A/4/Part II/Rev.7 (the Directive), which amongst other things provides that interview panels must consist of at least three and normally up to five members and must include at least one representative of the recruitment administrator and one from the hiring department. Nothing in this provision precludes the presence of two members from the hiring department, and importantly the constituted interview panel did comprise of at least one representative of the recruitment administrator and one from the hiring department. More specifically in relation to the issue of bias, the UNRWA DT agreed with the Agency that the allegations were insufficiently substantiated and were belied by the finding of suitability.

30. The rule against bias, as part of the requirements of procedural fairness, requires that members of selection panels must have an open mind throughout the proceedings. A decision may be set aside if there is a reasonable apprehension of bias. In other words, there is no need to prove actual bias but only a reasonable apprehension. The test is objective and an inference of a reasonable apprehension of bias must be consistent with the proved facts and a plausible and probable inference.

31. The observations of the interview panel on Ms. Mahmoud's skills, experience and abilities are for the most part complimentary and favourable. She fell short on a narrow relative consideration. The interview panel believed that the successful candidate had better strategic vision. It is possible to infer reasonably from the interview panel's analysis and its sympathetic view of Ms. Mahmoud that on the probabilities it was not prejudiced against her on the bases alleged. In so far as there may have been tensions between Ms. Mahmoud and the DED, the record suggests that a safeguard against undue prejudice existed in the fact that the majority of the panelists were appointed from outside the hiring department.

32. With regard to Ms. Mahmoud's complaint regarding the selection criteria or considerations relating to field experience and strategic leadership, it is evident from the seniority of the position and its role within the Agency that the incumbent of the post would be required to provide strategic and technical guidance to education staff in the field. These factors were legitimate and proper considerations.

33. Ms. Mahmoud's contention that the UNRWA DT ignored the criterion of internal candidate priority is without merit. It is beyond question that the selected candidate was also an internal candidate.

34. Ms. Mahmoud also complained that the DED was not consistent in her interview questions and asked her questions that differed from those posed to other candidates. She gives one example of the DED asking her about disseminating results in the field while other candidates were assessed on a question about strategic leadership and how different units would work together. Ms. Mahmoud identified no factual basis regarding the source of her information about the interview of other candidates. The Agency stated that these bare allegations are accordingly unsubstantiated and maintained that all the candidates were asked the same questions but with reasonable deviations in follow up questions aimed at interrogating the candidates' initial responses.

35. The approach taken by the interview panel to the questions was reasonable and did not detract from the fairness of the process. Interviews by nature will vary depending on the responses elicited from different candidates. The approach suggested by Ms. Mahmoud would introduce a measure of rigidity that would stifle the process. Provided the same ground and selection criteria are canvassed and considered, interview panels should be accorded some leeway and flexibility to meaningfully direct the engagement, including the interrogation of a candidate's specific responses, in order to elicit relevant information that will assist in making the ultimate decision.

36. Ms. Mahmoud complained further about the fact that her interview was conducted by Skype, the quality of which was not good, and that she felt the interview panel engaged with her in a superficial manner. The latter is a perception that is not supported. If she was concerned about the quality of the video call, she should have raised it at the interview and have asked for an alternative. There is no evidence that she did that.

37. Ms. Mahmoud's concerns about the written test are also of no consequence. She contends that there was no adherence with paragraph 24 of the Directive, which requires the hiring manager or recruitment administrator to appoint at least two staff members to grade the candidate exams of which at least one of the graders should be from a department other than the hiring department. Ms. Mahmoud maintains that the grading was done by the Education Department. She also complained that contrary to the provisions of paragraph 34 of the Directive, the correction of the test papers took more than 10 business days from the date the test was administered. To the extent that they occurred, these irregularities were not material or consequential because the written test score was not a determining factor in the final decision. The tests were used as a mechanism for the short-listing process and Ms. Mahmoud was short-listed. The assessments of the interview panel make no reference to the tests and it is obvious that the determination of the suitability of the candidates (accepting their similar skills, qualifications and experience) was based primarily on their performances during the interviews, particularly in relation to their respective strategic capacities.

38. In her appeal brief, Ms. Mahmoud sets forth various factors she maintains were not taken into account by the UNRWA DT, namely: i) her hospitalization and subsequent sick leave; ii) her expectation of promotion; iii) the restructuring of the department; and iv) the incident at the workshop where the DED allegedly insulted her. With the exception of the last issue, the matters raised are irrelevant to the question of whether Ms. Mahmoud received full and fair consideration. The incident at the workshop is relevant to the question of bias, but that was clearly considered by the UNRWA DT in its determination that the evidence did not attain the standard required to set aside the decision on that basis.

39. Ms. Mahmoud has also requested compensation for "additional duties". This request did not form part of the request for decision review. It was accordingly proper for the UNRWA DT not to consider it.

40. In the premises, there is no merit in any of Ms. Mahmoud's complaints and the UNRWA DT did not err in concluding that she had received full and fair consideration in her application for promotion. Moreover, no basis has been laid for challenging the discretion of the UNRWA DT not to hold a hearing. It was clearly able to consider all the issues appropriately and expeditiously on the basis of the documentary evidence.

Judgment

41. The appeal is dismissed and Judgment No. UNRWA/DT/2019/017 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Halfeld

(Signed)

Judge Sandhu

Entered in the Register on this 20th day of December 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar