



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

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Judgment No. 2021-UNAT-1134

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

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case Nos.:	2020-1458
Date:	25 June 2021
Registrar:	Weicheng Lin

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Counsel for Appellant: Amer Abu Khalaf, OSLA  
Counsel for Respondent: Rachel Evers

**JUDGE MARTHA HALFELD, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal and cross-appeal against Judgment No. UNRWA/DT/2020/048 issued on 16 August 2020 by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) Dispute Tribunal (UNRWA DT or Dispute Tribunal), which dismissed Mr. AlMousa's application contesting the cancellation of the recruitment process for the position of Human Resources Officer HRO/R, Grade P-3, for which the interview panel had recommended Mr. AlMousa be selected following a competitive recruitment exercise.
2. Mr. AlMousa appeals the Judgment on the merits and the Commissioner-General cross-appeals the receivability finding. For the reasons set out below, the Appeals Tribunal dismisses both the appeal and the cross-appeal.

**Facts and Procedure**

3. The facts, as summarized by the UNRWA DT Judgment, are as follows:<sup>1</sup>

... Effective 1 February 2009, the Applicant was employed by the Agency on a fixed-term appointment, Grade 16, Step 1, as Recruitment Officer at HQA. After having occupied different posts, at the time material to the present application, the Applicant encumbered the post of Human Resources Officer (Entitlements), Grade 17, Step 11, at HQA. ... On 1 November 2018, the Agency published, internally and externally, a vacancy announcement for the post of Human Resources Officer (Recruitment), Grade P-3, HQA ("HRO/R"). The Applicant applied for the post. ... Following a competitive recruitment process, on 27 March 2019, the Interview Panel unanimously recommended the Applicant for the post of HRO/R. ... Effective 1 April 2019, the Applicant's appointment was converted from "X" category fixed-term appointment to "A" category Temporary Indefinite Appointment.

... On 24 September 2019, the Director of Human Resources ("DHR") verbally informed the Applicant that he had been recommended for the post of HRO/R and that this post had been frozen in April 2019.

... By email to the DHR dated 14 October 2019, the Applicant again inquired about the outcome of the selection process for the post of HRO/R. On the same day, the DHR responded to the Applicant's email and indicated that this post had been frozen in April 2019 in order to maintain a 12% vacancy rate for "[United Nations New York] funded posts". The DHR further stated that this post was to remain frozen, as the need for it and its functions would be revisited in the future as part of the reform of the Human Resources

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<sup>1</sup> Impugned Judgment, paras. 2-7.

Department (“HRD”). Accordingly, the DHR informed the Applicant that the recruitment process for the post of HRO/R was cancelled.

... By letter dated 23 October 2019, the Head, Recruitment Section informed the Applicant that the recruitment process for the post of HRO/R was cancelled.

4. After having requested a decision review, Mr. AlMousa filed an application before the UNRWA DT on 19 December 2019.

5. The UNRWA DT received the application but dismissed it on grounds that the Agency had the discretionary authority to cancel the recruitment as Mr. AlMousa had not yet been appointed and Mr. AlMousa did not establish that the decision was arbitrary or capricious, motivated by prejudice, or procedurally flawed; rather the UNRWA DT concluded the initial freezing of the post and subsequent cancellation was part of a legitimate restructuring and upon request of the United Nations Secretary-General to maintain a 12 per cent vacancy rate on New York funded posts. Regarding the six-months of delay in informing Mr. AlMousa of the cancellation, the Dispute Tribunal denied his request for moral damages on grounds that he did not proffer evidence as to how the delay caused him harm. Both parties do not contest the facts established by the UNRWA DT.

6. Mr. AlMousa appeals on the merits, and the Commissioner-General appeals on the issue of receivability.

7. On 16 September 2020, the Appellant filed an appeal against Judgment No. UNRWA/DT/2020/048. This appeal was registered with the Appeals Tribunal as Case No. 2020-145.

8. On 19 November 2020 the Commissioner-General filed his answer to the appeal and a cross-appeal.

9. On 9 December 2020, the Appellant filed his answer to the Commissioner-General’s cross-appeal.

## **Submissions**

### **Mr. AlMousa's Appeal**

10. Mr. AlMousa requests that the impugned Judgment be rescinded and that the Appeals Tribunal order specific performance to compensate him for his loss of significant career development by placing him on a P-3 roster.

11. According to Mr. AlMousa, the UNRWA DT erred in law in not addressing the threatening tone of the Commissioner-General in his response to the supplementary evidence Mr. AlMousa provided. He adds that the tone was designed to discourage staff from seeking justice.

12. Mr. AlMousa also contends that the UNRWA DT erred in fact and law when assessing the evidence regarding the cancellation of the recruitment process and not considering the legal effects of the Appellant's observation and supplementary evidence. The UNRWA DT determined the supplemental evidence was probative but did not state what probative value it had and did not analyze the legal consequences of the evidence. Further the UNRWA DT erred in concluding that there were no procedural flaws. Firstly, the decision to freeze the recruitment post was made after the end of the recruitment process and after the Director of Human Resources (DHR) was made aware that he had been recommended. Secondly, the UNRWA DT did not consider that several posts were vacant at the time the decision was made to freeze the HRO/R post which was filled after his post had been frozen. The other post the Deputy Commissioner-General recommended be frozen was vacant at the time.

13. Next, Mr. AlMousa contends that the UNRWA DT erred in its conclusion that he did not proffer evidence to support his allegation and refers to the Deputy Commissioner-General's e-mail where he requested the DHR freeze ongoing recruitments including the post of HRO/R. In this e-mail, there is no mention of cancelling the recruitment, but merely freezing it, and this does not preclude the DHR from placing the Appellant on a roster of approved candidates until the post is unfrozen.

14. Further, Mr. AlMousa maintains that the UNRWA DT erred in concluding that the restructuring was in progress whereas the DHR's e-mail merely announced that a Human Resources restructure would commence but hadn't started yet. The e-mail came six months after the interviews for the post had been concluded. It thus should not be used in a retroactive

manner to justify the cancellation. This attitude of the Agency does not pass any form of reasonableness test. The evidence he provided and his observations on the supplemental evidence showed that the post of HRO/R was not initially listed to be frozen.

15. For Mr. AlMousa, the UNRWA DT erred in not concluding that there was a procedural irregularity as the Agency did not conclude its recruitment within the required 120 days required by para. 95(g) of the International Personnel Selection Policy. Neither the 12 per cent vacancy rate nor the restructuring claim were documented by HRD in a reasonable time period but became reasons to justify cancellation six months after the interviews had concluded.

16. The UNRWA DT failed to consider whether the cancellation was made in a fair, transparent, and non-discriminatory manner, as he set forth procedural irregularities and inherent unfairness and lack of transparency, which the UNRWA DT did not assess in its Judgment.

17. According to Mr. AlMousa, the interview panel recommended him in March 2019, the result of the recruitment should have been released by April 2019 in accordance with the Agency's recruitment rules and regulations and thus the decision to cancel the recruitment as well as the restructure would not have even been options in April. Rather, they came along months later.

18. The UNRWA DT erred, since it should have found there was lack of transparency as Mr. AlMousa was only informed of the cancellation by the DHR in September 2019. This shows a lack of due care for its staff. The UNRWA DT also erred in assessing the consequences to Mr. Al Mousa who was set to receive a significant promotion. He should have been placed on a P-3 roster and informed of the post's freeze and further informed that he would be placed on the post once the post became unfrozen.

19. Since the UNRWA DT stated the six-month delay is unjustifiable and not acceptable, it agrees there was significant procedural irregularity and flaws which supports his application on the merits. This irregularity tainted the process which had direct effect on his terms of appointment as the UNRWA DT correctly concluded. Thus, it should be rescinded as in line with the Appeals Tribunal's Judgment in *El-Kholy*,<sup>2</sup> which provided that an irregularity in promotion procedures will only result in rescission of the decision not to promote a

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<sup>2</sup> *El-Kholy v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-730.

staff member when he or she would have had a significant chance for promotion. Here, the UNRWA DT even stated when finding the application receivable that he had a serious chance of promotion as he was the recommended candidate.

**Commissioner-General's Answer**

20. The Commissioner-General maintains that the Appeals Tribunal should reject the appeal in its entirety. The UNRWA DT did not err and specifically considered Mr. AlMousa's observations and supplementary evidence. It correctly held that he failed to establish that the decision to cancel the recruitment process was arbitrary, capricious, or flawed.

21. It is not necessary to address every claim made by a litigant when it has no merit. While Mr. AlMousa asserts that the UNRWA DT did not specifically mention various pieces of evidence that he provided, the substance of his arguments is mere reiteration and re-litigation. The UNRWA DT correctly concluded that the supplementary evidence Mr. AlMousa had provided demonstrated that the decision was lawful as the decision to freeze and cancel the post was due to the Secretariat's imposed freeze and subsequent restructuring of the department.

22. Mr. AlMousa referred to paragraphs of his observations that were ignored - namely paras. II(F)(i)(1) to II(F)(iii). However, they do not exist. To the extent he claims para. II(2)(D) was ignored, this is not true as the UNRWA DT considered the record and concluded there was no evidence to support the allegation regarding an improper motive.

23. Mr. AlMousa's claim that the UNRWA DT erred in law by not addressing the threatening tone of the Respondent in response to the supplementary evidence is without merit and should be disregarded. The Commissioner-General was within his rights to contest the admissibility of the evidence proffered by Mr. AlMousa which he had obtained from a former UNRWA staff member, unrelated to him. This raised serious concerns of breaches of confidentiality and of the Agency's regulatory framework which the Agency had been addressing internally.

### **Commissioner General's Cross-Appeal**

24. The Commissioner-General files what he terms a “conditional cross appeal” citing to *Bagot, Ovcharenko, and Worsley*<sup>3</sup> and asks that the Appeals Tribunal not address the Commissioner-General's conditional cross-appeal if the appeal by Mr. AlMousa will be dismissed.

25. For the Commissioner-General, the UNRWA DT erred in law and in fact on receivability when it determined that the contested decision produced direct legal consequences affecting Mr. AlMousa's terms and conditions. The UNRWA DT erred as the recommendation of the interview panel to select Mr. AlMousa did not produce direct legal consequences. The Appeals Tribunal's jurisprudence states that the legal act by which the Organization undertakes to employ a person as a staff member is a letter of appointment. In the absence of a valid contract of employment the UNRWA DT erred in law by finding the mere recommendation created a legal consequence, whereas no legal right or obligations or consequences were created until such time as he would have been offered a letter of appointment. No valid offer was forthcoming due to the cancellation of the recruitment process. The UNRWA DT's conclusion that he had “all the chances and a serious expectation to be appointed to the post of HRO/R” was irrelevant to the determination of receivability; rather the decision to cancel the recruitment process for the post of HRO/R was a properly affected discretionary decision which produced no legal consequences to Mr. AlMousa.

### **Mr. AlMousa's Answer to the Cross-Appeal**

26. Mr. AlMousa requests the Appeals Tribunal to reject the cross-appeal in its entirety. He asserts that the e-mail of the DHR was an administrative decision and the UNRWA DT properly addressed the issue of receivability.

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<sup>3</sup> *Bagot v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-718, para. 37 citing to *Ovcharenko et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-530 and *Worsley v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-199.

### Considerations

27. The Appeals Tribunal will examine the Commissioner-General's cross-appeal before addressing Mr. AlMousa's main appeal, since the former challenges the receivability of the application before the UNRWA DT.

#### *The cross-appeal – the receivability of the application at first instance*

28. The UNRWA DT held that Mr. AlMousa's application was receivable, finding that the contested decision –the decision to cancel the recruitment– met the definition of a reviewable administrative decision. It noted that since Mr. AlMousa had been recommended by the interview panel, he had all the chances and a serious expectation to be appointed to the post. Therefore, cancellation of the recruitment directly affected his terms of employment. The Commissioner-General challenges this order in his cross-appeal, maintaining that no valid offer of a contract was forthcoming due to the cancellation of the recruitment; therefore, there was no valid contract of employment.

29. With regard to the cross-appeal referred to by the Commissioner-General as a “conditional cross-appeal”, the Appeals Tribunal firstly notes that neither its Statute nor its Rules of Procedure provide for such a type of cross-appeal. Secondly, UNAT Rules of Procedure stipulate in Article 9(4) that “the cross-appeal may not add new claims” and thirdly, the Commissioner-General was the prevailing party at first instance and thus his right to appeal against the Judgment is circumscribed.<sup>4</sup> In *Sefraoui*,<sup>5</sup> this Tribunal held that a party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. These arguments could lead to the conclusion that the cross-appeal itself is not receivable.

30. Nonetheless, as this Appeals Tribunal has previously held, this rule is not absolute.<sup>6</sup> In *Chemingui*<sup>7</sup> this Appeals Tribunal held that a party does not need a cross-appeal to raise any additional arguments, if their claim is only to maintain the order in the judgment by means of an additional argument that had already been rejected by the first

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<sup>4</sup> *Kozul-Wright v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-843, paras. 40-45.

<sup>5</sup> *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048, para. 18.

<sup>6</sup> *Ngoma-Mabiala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-361, paras. 17-23; *Saffir and Ginivan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-466.

<sup>7</sup> *Chemingui v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-930.



instance tribunal. A party “who does not seek to modify the UNDT’s order is entitled to raise other lines of reasoning in the answer to the appeal that could simply be alternative reasons to affirm the judgment, without enlarging his/her rights or lessening those of the other side.”<sup>8</sup> A *contrario sensu*, when a party aims to modify the order, the cross-appeal is the proper means of doing so. In the present case, what the Commissioner-General purports to do is the modification of the UNRWA DT judgment, by means of reiterating previous arguments and aiming to reverse the decision which held that the application was receivable before assessing its merits.

31. Therefore, we find that the cross-appeal is receivable. However, we dismiss it in light of the Commissioner-General’s own request that his cross-appeal not be examined should the appeal be dismissed, as will be the case in this judgment; and, secondly, because we have not detected any error in the UNRWA DT’s order which found that the application was receivable.

32. Indeed, Article 2(1)(a) of the UNDT Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The Appeals Tribunal notes that Mr. AlMousa had been a staff member of the Agency since 2009<sup>9</sup> on a temporary indefinite appointment and, therefore, any recruitment exercise in which he participated could have an impact on this appointment and more broadly on his career.

33. Moreover, since the terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance, there is no error in the UNRWA DT’s finding that the contested decision produced direct legal consequences affecting the terms and conditions of Mr. AlMousa’s employment, given that i) he had all the chances and a serious expectation of being appointed after having been recommended by the interview panel; ii) the recruitment process was cancelled after the recommendation; and iii) he has never been appointed to the desired post.<sup>10</sup>

34. The cross-appeal accordingly fails.

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<sup>8</sup> *Chemingui v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-930, para. 32.

<sup>9</sup> Impugned Judgment, para. 2.

<sup>10</sup> Impugned Judgment, para. 44.

*The main appeal – the merits of the application*

35. The main issue for consideration and determination now is whether the UNRWA DT erred when it found no irregularities in the impugned cancellation of the recruitment exercise for the post of HRO/R.

36. Mr. AlMousa asserts that the UNRWA DT erred in not having considered i) the threatening tone used by the Commissioner-General in response to the supplementary evidence; ii) the additional observations and supplementary evidence produced. He also claims that there is an inconsistency in the UNRWA DT Judgment, when it found that the supplementary evidence was not lacking in probative value to allow it to remain on record; nevertheless, it ignored this evidence when examining the facts.

37. From the outset, the Appeals Tribunal notes that according to Article 2 of the Appeals Tribunal's Statute, the competence of this Tribunal is limited to certain issues. For a first instance decision to be vacated or overturned, an appellant must provide proof that the first instance tribunal, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case, or erred on a question of fact, resulting in a manifestly unreasonable decision.<sup>11</sup>

38. It follows that it is not enough for an appellant to disagree with the findings of fact or the conclusions of law made by the trial court. Rather, for an appeal to succeed, an appellant must convince this Tribunal that the contested decision fulfills the objective criteria of its competence.<sup>12</sup> In the present case, Mr. AlMousa has failed to establish any error in the UNRWA DT Judgment, although his appeal undoubtedly conveys significant discontentment with its decision.

39. Mr. AlMousa's claim that the UNWRA DT erred in not analyzing his observations and supplementary evidence is to no avail. The UNRWA DT was fully cognizant of the entirety of the parties' comments and evidence in the record. Indeed, the first part of the "considerations" in the judgment is entirely dedicated to analysing the parties' comments, additional evidence

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<sup>11</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707, para. 17.

<sup>12</sup> *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29, citing *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045; *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707, para. 18.

and submissions which followed the UNWRA DT's Order allowing Mr. AlMousa to submit supplementary evidence. Thereafter, Mr. AlMousa did not limit his submissions to the Commissioner-General's comments on his own previous submissions, but even presented further evidence, which was accepted by the UNRWA DT, despite the Commissioner-General's objection. The UNRWA DT also decided in favour of Mr. AlMousa when it rejected the Commissioner-General's requests that some pieces of evidence annexed to Mr. AlMousa's submission be stricken from the record and others be kept confidential. These decisions are clear indications that all the parties' submissions and evidence were duly considered when the UNRWA DT issued its judgment.

40. With regard to the fact that the UNRWA DT did not consider the argument that other vacant posts were filled after the request for freezing posts, this is not enough to reverse the Judgment. The Appeals Tribunal held in *Abu Jarbou* that “[i]t is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit”.<sup>13</sup> In the present case, the Appeals Tribunal is satisfied that the UNRWA DT considered all evidence relevant to the issues before it. Specifically, other posts might have been filled in different circumstances for other relevant purposes.

41. Most important to the present case is the fact that the Agency met its burden to provide adequate and reasonable justification for the contested administrative decision, so as to ensure the Tribunal's ability to judicially review the validity of the contested decision.<sup>14</sup> An administrative decision to cancel a recruitment exercise which has adversely affected a staff member recommended for that specific post can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive.<sup>15</sup> This is to say that, when judging the validity of the Commissioner-General's exercise of discretion in administrative matters, as in the case of the cancellation of the recruitment exercise, the UNRWA DT determines if the decision is legal, rational, procedurally correct, and proportionate.<sup>16</sup> The UNWRA DT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the UNRWA DT to consider the

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<sup>13</sup> *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47.

<sup>14</sup> *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780.

<sup>15</sup> *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32.

<sup>16</sup> *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-949, para. 27.

correctness of the choice made by the Commissioner-General amongst the various courses of action open to him. Nor is it the role of the UNRWA DT to substitute its own decision for that of the Commissioner-General.<sup>17</sup>

42. Once the Agency has provided a reasonable motivation for the contested administrative decision, the staff member has the burden of proving that such extraneous factors played a role in the administrative decision.<sup>18</sup> In the present case, the burden has shifted to Mr. AlMousa to prove that the reason provided by the Agency was insufficient or inadequate to cancel the recruitment exercise in which he had been recommended around six months before, but had not yet been appointed.

43. In this regard, the UNRWA DT's determination that the reason behind the contested administrative decision was "the United Nations Secretariat's request to maintain a 12% vacancy rate for the United Nations New York funded posts and the upcoming restructuring exercise of the HRD",<sup>19</sup> which lead to an initial freeze and later to the cancellation of the recruitment process for the post of HRO/R, is not unreasonable and Mr. AlMousa has not convinced the Appeals Tribunal that there was any error of law or of fact in it.

44. The UNRWA DT also found that the evidence on the record had shown that i) several posts within the Agency were frozen, including the post of HRO/R; ii) the DHR had been asked to freeze the ongoing recruitments within the HRD, including the post of HRO/R, following the United Nations Secretary-General's request; iii) a comprehensive restructuring exercise of the Agency's human resources structures was in progress at the time.<sup>20</sup> The UNRWA DT noted that the Agency is not obligated to fill the post once it has begun the recruitment.<sup>21</sup>

45. Having considered all the circumstances of the case, the Appeals Tribunal finds that in this appeal Mr. AlMousa merely reiterates previous arguments already put before the UNRWA DT and has failed to convince this Appeals Tribunal of any error in the UNRWA DT Judgment. Moreover, provided that the justification is reasonable for the administrative decision, which of the options (cancellation or freezing of the recruitment exercise or even placement of Mr. AlMousa on a roster) was the best course of action is a matter for

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Impugned Judgment, para. 46.

<sup>20</sup> Impugned Judgment, para. 47.

<sup>21</sup> *Kinyanjui v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-932, para. 21.

the Agency to have decided given the situation at the time. This reasoning that the Secretary-General has broad discretion in matters of staff selection is based on Article 101 (1) of the Charter of the United Nations, which provides that “staff shall be appointed by the Secretary-General under regulations established by the General Assembly.” By the same token, Staff Regulation 4.1 further stipulates that “the power of appointment of staff members rests with the Secretary-General.” It is also based on a line of Tribunal judgments confirming this.

46. On these premises, having found that there is nothing in the record to suggest that the decision had been grounded on improper motives, the Appeals Tribunal will not interfere with the discretion bestowed upon the Agency to cancel a recruitment exercise even when a candidate had been recommended, yet not appointed.<sup>22</sup> Contrary to Mr. AlMousa’s allegation, this is not a procedural flaw, but was justifiable in the circumstances of the case and in light of the Appeals Tribunal’s jurisprudence held in *Kinyanjui*.

47. There is one last topic to be addressed. It relates to Mr. AlMousa’s allegation that there is an error in the UNWRA DT’s finding that the delay in informing him about the cancellation of the recruitment process did not taint the recruitment. In this regard, the UNRWA DT considered the fact that, while the recruitment process was finalized as early as March 2019, Mr. AlMousa was only officially informed of the cancellation of the recruitment exercise on 14 October 2019, by way of e-mail from the DRH, after he had enquired about the outcome of the selection process, (even though the same correspondence mentioned that he had been provided some informal verbal feedback). The UNRWA DT also acknowledged that, given that the post had been frozen in April 2019 and that a delay in notifying a decision has no bearing on its legality, then there was no evidence to establish that the delay had caused any harm to Mr. AlMousa.<sup>23</sup>

48. The Appeals Tribunal holds that the UNRWA DT was correct in its finding that this procedural irregularity was not serious enough to vitiate the decision itself. In reality, the delay refers to the communication of the contested decision and so took place *after* the decision of cancellation of the recruitment process; thus it cannot have retroactive effect. Moreover, the claimant bears the burden of proof to establish the existence of negative consequences, liable to be considered damages, resulting from the illegality on a cause-effect lien. Our case law

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<sup>22</sup> Impugned Judgment, para. 49.

<sup>23</sup> Impugned Judgment, para. 50.

requires that the harm be directly caused by the administrative decision in question.<sup>24</sup> If these two other elements of the notion of responsibility are not justified, the illegality can be declared but compensation cannot be awarded.<sup>25</sup>

49. In this present case, there was no illegality and there is no evidence on the record of any possible harm that such a delay could have caused to Mr. AlMousa's career development. Consequently, it is our view that this delay, albeit regrettable, was immaterial and inconsequential within the context of Mr. AlMousa's appointment, there being no evidence to the contrary. Furthermore, while it is true that the recruitment process ended in March 2019, Mr. AlMousa was only informed of his *recommendation* to the post in September and subsequently, less than a month later, of the *cancellation* of the recruitment itself. This shows that his recommendation did not last long enough to create any serious expectations of recruitment, since this would only be completed with the letter of appointment.<sup>26</sup>

50. The evidence in the case establishes that the Administration acted fairly and transparently towards Mr. AlMousa. It cannot be said that the decision to cancel the recruitment exercise was in any way arbitrary. The facts support the conclusion that this decision was a reasonable exercise of the Agency's discretion.

51. In light of the above, the Appeals Tribunal finds that the UNRWA DT was correct in law and in fact in deciding that Mr. AlMousa failed to establish that i) the decision to cancel the recruitment process for which he had been recommended was unlawful; and ii) the delay in notifying him of the cancellation of the recruitment has caused him any harm.

52. The appeal must be dismissed.

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<sup>24</sup> *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724, para. 21, citing *Diatta v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-640; *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277.

<sup>25</sup> *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277, para. 24; *Sirham v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-860, para. 19.

<sup>26</sup> *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 28; *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-111, paras. 23-25; *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810, paras. 37-39.

**Judgment**

53. The appeal and cross-appeal are dismissed and Judgment No. UNRWA/DT/2020/048 is affirmed.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of June 2021.

*(Signed)*

Judge Halfeld  
Juiz de Fora, Brazil

*(Signed)*

Judge Colgan,  
Auckland, New Zealand

*(Signed)*

Judge Murphy  
Cape Town, South Africa

Entered in the Register on this 4<sup>th</sup> day of August 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar