



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

Judgment No. 2023-UNAT-1350

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2022-1738
Date of Decision:	30 June 2023
Date of Publication:	6 July 2023
Registrar:	Juliet Johnson

Counsel for Appellant: Self-represented
Counsel for Respondent: Natalie Boucly

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Ismail Said Abu Hatab (Mr. Abu Hatab) contested the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) not to select him for the 2021-2022 roster created for the posts of School Principal for All Areas, Grade 15 (contested decision). By Judgment No. UNRWA/DT/2022/018¹ (impugned Judgment), the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) concluded that the contested decision was lawful and that Mr. Abu Hatab's application was given full and fair consideration. Mr. Abu Hatab lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

2. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

3. In 2020, Mr. Abu Hatab was employed by the Agency as a School Counsellor, Grade 10, on a temporary indefinite appointment at Nuzha Preparatory Boys' School No. 2.

4. On 24 June 2020, the Agency internally advertised the posts of School Principal for All Areas. Mr. Abu Hatab was one of 408 applicants who applied for the position. He was interviewed by the interview panel as one of the 71 candidates. The interview panel concluded that Mr. Abu Hatab did not meet any of the four competencies required (i.e. planning and organizing, problem solving communication, leadership, and teamwork skills) and, therefore, was not recommended to fill any of the posts of School Principal for All Areas.

5. On 21 April 2021, the Director of UNRWA Affairs in Jordan (DUA/J) approved the recommendation of the interview panel which recommended 21 candidates to fill the posts of School Principal for All Areas.

6. On 28 April 2021, Mr. Abu Hatab was informed that he had not been rostered for these posts.

¹ *Abu Hatab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/018.

7. On 25 June 2021, Mr. Abu Hatab requested a decision review of the decision not to select him for said roster. On 14 July 2021, the Director of Human Resources (DHR) issued a written decision upholding the contested decision and concluding that the selection process was conducted in accordance with the UNRWA regulatory framework and that Mr. Abu Hatab had not been rostered because he did not meet any of the four competencies required by the interview panel.

8. On 11 October 2021, Mr. Abu Hatab filed an application with the UNRWA Dispute Tribunal contesting the decision not to select him for the 2021-2022 roster created for the posts of School Principal for All Areas. He requested the UNRWA DT to hold an oral hearing.

9. On 5 January 2022, the Commissioner-General filed its reply in English, and this reply was transmitted to Mr. Abu Hatab on the same day. On 29 April 2022, the Commissioner-General filed the Arabic translation of its reply, which was transmitted to Mr. Abu Hatab on 4 May 2022.²

Impugned Judgment

10. On 29 May 2022, the UNRWA Dispute Tribunal issued the impugned Judgment. Regarding Mr. Abu Hatab's request for an oral hearing, the UNRWA DT noted that he did not provide any justification in support of his request. The UNRWA DT recalled its wide discretion in case management matters pursuant to Article 11(1) of the UNRWA Dispute Tribunal Rules of Procedure and concluded that "the record before it [was] sufficient to render a decision without an oral hearing".³

11. The UNRWA Dispute Tribunal observed that Mr. Abu Hatab merely repeated the same arguments as in his request for decision review and concluded that he provided no clear and convincing evidence to support his arguments that his application was not given full and fair consideration. It found no basis to doubt the recruitment report of 6 April 2021 which

² Article 6 of the UNRWA Dispute Tribunal Rules of Procedure provides that the Commissioner-General shall submit "within 14 calendar days after the submission date of [his] reply in English, an Arabic translation of the English reply", but in the present case, the UNRWA DT granted the Commissioner-General three extensions of time to file the Arabic translation of its reply.

³ Impugned Judgment, para. 24.

demonstrated that Mr. Abu Hatab did not meet any of the four competencies required for the posts of School Principal for All Areas.⁴

12. Finally, the UNRWA DT concluded that Mr. Abu Hatab failed to demonstrate any abuse of discretion in the Agency's contested decision and to prove that "the contested decision was arbitrary or capricious, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law".⁵

Procedure before the Appeals Tribunal

13. On 8 October 2022, Mr. Abu Hatab filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General responded on 9 January 2023.

Submissions

Mr. Abu Hatab's Appeal

14. Mr. Abu Hatab requests that the Appeals Tribunal "overturn" the impugned Judgment, award him compensation for the moral and material damages suffered by him as a result of the contested decision and refer the case to the Commissioner-General to enforce accountability. Alternatively, he requests that the Appeals Tribunal return the case to the UNRWA DT to be heard by a new judge.

15. With respect to the impugned Judgment, Mr. Abu Hatab submits that the UNRWA DT erred in fact and in law in dismissing his application.

16. Firstly, Mr. Abu Hatab contends that the UNRWA DT erred by denying his request for an oral hearing. He argues that the UNRWA Dispute Tribunal should have issued an order "asking [the parties] to indicate whether it was appropriate to hold an oral hearing".

17. Secondly, Mr. Abu Hatab submits that the UNRWA Dispute Tribunal erred by issuing the impugned Judgment "in undue haste". He notes that he received the Arabic translation of the Commissioner-General's reply on 4 May 2022 and that the impugned Judgment was issued on

⁴ *Ibid.*, para. 28.

⁵ *Ibid.*, para. 29.

29 May 2022. Therefore, he contends that he was not able to timely file a request for leave to submit his observations to the Commissioner-General's reply.⁶

18. Lastly, Mr. Abu Hatab contends that the UNRWA Dispute Tribunal erred in fact and in law in concluding that his application was given full and fair consideration and that he had failed to demonstrate any abuse of the Agency's discretionary authority or to prove that "the contested decision was arbitrary or capricious, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law".⁷ He further contends that the UNRWA DT failed to exercise its jurisdiction to carefully examine the written evidence. He submits that the UNRWA DT erred by remaining silent and accepting the recruitment report when the interview panel's recommendation was signed only by three of the five panel members. He argues that this is a "major omission" that led the UNRWA DT to also err by failing "to state the legal implications of the [DUA/J]'s approval" of the recommendation of the panel.

The Commissioner-General's Answer

19. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

20. The Commissioner-General submits that the UNRWA Dispute Tribunal did not err in fact, law or procedure when it dismissed Mr. Abu Hatab's application. The Commissioner-General contends that Mr. Abu Hatab failed to identify reversible errors in the impugned Judgment.

21. Firstly, the Commissioner-General contends that Mr. Abu Hatab has failed to establish that the UNRWA DT erred by denying his request for an oral hearing. The Commissioner-General recalls that pursuant to Article 11 of the UNRWA DT Rules of Procedure, the UNRWA Dispute Tribunal has broad discretion on whether to hold a hearing in person or not and argues that it provided a "reasonable explanation" as to why it was not holding an oral hearing in the present case. The Commissioner-General also observes that

⁶ UNRWA regulatory framework does not provide any time limit to submit a request for leave to file observations.

⁷ Impugned Judgment, para. 29. See also Recruitment report of 6 April 2021.

Mr. Abu Hatab did not provide any arguments to demonstrate that the UNRWA DT did not properly exercise its discretion.

22. Secondly, regarding Mr. Abu Hatab's submission that he was not given the opportunity to comment on the Commissioner-General's reply, the latter submits that pursuant to General Staff Circular No. 09/2021 (UNRWA Dispute Tribunal Practice Direction No. 02: Filing of Motions, Responses and Observations) (GSC/09/2021), observations can only be filed after submitting a request for leave to file observations to the UNRWA Dispute Tribunal. In the present case, there is no evidence or suggestion that Mr. Abu Hatab filed or was about to file such a request.

23. Thirdly, the Commissioner-General admits that the interview panel's recommendation was not signed by two members of the panel but submits that it was of no legal consequence since pursuant to paragraph 69 of the Area Staff Personnel Directive No. PD/A/4/Part II/Rev. 7/Section I, "[i]nterview panels must consist of at least three and normally up to five members" and, in the present case, the interview panel's recommendation was signed by three panel members.

24. In any event, relying on the Appeals Tribunal jurisprudence, the Commissioner-General notes that the alleged issue of the missing signatures constitutes a new element that was not put forward before the UNRWA Dispute Tribunal and cannot be introduced for the first time on appeal.⁸ Therefore, the Commissioner-General requests the Appeals Tribunal to find this aspect inadmissible.

25. Finally, the Commissioner-General submits that the reliefs sought by Mr. Abu Hatab have no legal basis.

Considerations

26. According to Article 2(1) of the Appeals Tribunal Statute:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

...

⁸ *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

- (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.

27. Mr. Abu Hatab, in his appeal, does not show that the UNRWA Dispute Tribunal committed such an error of law, fact or procedure.

Did the UNRWA DT commit an error of procedure, such as to affect the decision of the case, in denying Mr. Abu Hatab's request for an oral hearing?

28. Article 11(1) of the UNRWA DT Rules of Procedure provides that “[t]he judge hearing a case may hold oral hearings”. Moreover, the Appeals Tribunal has consistently emphasized the broad discretion of the Dispute Tribunal with regard to its case management. In *Nadeau*,⁹ we stated:

(...) Under Article 2(1)(d) of its Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNDT in which it is asserted that the UNDT has committed an error in procedure, such as to affect the decision of the case. It follows that a party, in order to be successful on appeal, not only has to assert and show that the UNDT committed an error in procedure but also that this error affected the decision on the case. As Mr. Nadeau has given no convincing reason on appeal as to why and how an oral hearing before the UNDT would have had an impact on the decision of the case, on this ground alone his appeal must fail. Furthermore, we do not find that by denying Mr. Nadeau's request for an oral hearing the UNDT committed an error of procedure. The Judge lawfully exercised the discretion vested in him by Article 16(1) of the UNDT Rules of Procedure.

29. In *Abdullah*,¹⁰ we found:

(...) Mr. Abdullah contends that the absence of an oral hearing and the UNRWA DT's failure to call witnesses infringed his due process rights. We are not so persuaded. Article 11(1) of the Rules of Procedure of the UNRWA DT provides that '[t]he Judge hearing a case may hold oral hearings'.

⁹ *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733, para. 31.

¹⁰ *Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-482, paras. 40-41.

(...) The record in this case indicates that the UNRWA DT gave due consideration to the request for an oral hearing. In particular, the Tribunal, at paragraph 70 of its Judgment, set out its rationale for exercising its discretion against an oral hearing. Mr. Abdullah has not adduced grounds to show that this discretion was exercised in such manner as to affect the outcome of the case, as required by Article 2(1)(c) of the Appeals Tribunal's Statute.

30. In the present case, the UNRWA DT addressed Mr. Abu Hatab's request for an oral hearing in paragraph 24 of the impugned Judgment. It considered "that the record before it [was] sufficient to render a decision without an oral hearing" and noted that Mr. Abu Hatab "did not provide any justification for his request for an oral hearing".¹¹ On appeal, Mr. Abu Hatab has not presented any grounds as to why an oral hearing would have been necessary and thus did not show that the UNRWA DT exercised its discretion in such manner as to affect the outcome of the case, as required by Article 2(1)(d) of the Appeals Tribunal Statute.

Did the UNRWA DT commit an error of procedure, such as to affect the decision of the case, by not giving Mr. Abu Hatab the opportunity to present his observations to the Commissioner-General's reply before issuing the impugned Judgment?

31. Article 6 of the UNRWA DT Rules of Procedure provides:

The Respondent's reply shall be submitted within 30 calendar days from the date of receipt of the application by the Respondent in one signed original together with annexed documents, which may be electronically transmitted. If the application is submitted in Arabic, the Respondent shall submit its reply in English and, within 14 calendar days after the submission date of the Respondent's reply in English, an Arabic translation of the English reply. The documents attached to the reply may be submitted in the language in which they have been issued. The Respondent who has not submitted a reply within the requisite period shall not be entitled to take part in the proceedings except with the leave of the Tribunal.

32. Paragraphs 10 to 12 of GSC/09/2021 provide:

Observations

¹¹ Impugned Judgment, para. 24.

(...) A submission known as ‘observations’, is an applicant’s submission in response to the Respondent’s reply. It may only be filed with leave of the Tribunal. Therefore, an applicant must first make a request to the Tribunal for leave to file observations.

(...) The purpose of observations is to respond to specific points raised by the Respondent in the reply and is not intended to be an opportunity for an applicant to merely repeat what has been stated in the application.

(...) Unless otherwise specified by the Tribunal, the observations must be filed within 14 days of receipt of the Order granting leave.

33. On appeal, Mr. Abu Hatab contends that he did not have sufficient time to comment on the Commissioner-General’s reply. In particular, he alleges that the signatures of two (out of five) senior officials were missing on the interview panel’s recommendation in the recruitment report, and that the UNRWA DT failed to consider the impact of this omission on the legality of the contested decision.¹² We understand that Mr. Abu Hatab intended to submit that the non-selection decision was unlawful due to the missing signatures, and that he would have addressed this issue had he been given sufficient time to file his observations to the UNRWA DT.

34. However, Mr. Abu Hatab’s argument is without merit as he had sufficient time to submit a request for leave to file observations before the UNRWA DT issued the impugned Judgment on 29 May 2022. Indeed, he received the English version of the Commissioner-General’s reply together with its annexes on 5 January 2022. From this date onwards, it was evident that the signatures of the Area Education Officer and of the Chief Area Officer were missing. According to Article 6 of the UNRWA DT Rules of Procedure, “[t]he documents attached to the [Commissioner-General’s] reply may be submitted in the language in which they have been issued”. Consequently, it must be assumed that the Commissioner-General never submitted an Arabic version of the recruitment report. However, even considering that Mr. Abu Hatab took notice of the Commissioner-General’s reply and its annexes only on 4 May 2022 (when he received the Arabic translation), he would have had ample time to file a request for leave to file

¹² Recruitment report of 6 April 2021.

observations before the UNRWA DT issued the impugned Judgment on 29 May 2022, but he decided not to do so.

Did the UNRWA DT err in concluding that Mr. Abu Hatab's application was given full and fair consideration and that his non-selection for the roster was based on objective and impersonal criterion, with no indication of bias, conflict of interest or discrimination?

35. With regard to the consideration given to his application, the only argument Mr. Abu Hatab presents on appeal is that the non-selection decision is unlawful because the signatures of two members of the interview panel were missing on the interview panel's recommendation.¹³

36. This argument must be rejected because it is raised by Mr. Abu Hatab for the first time on appeal. Indeed, as we stated in *Staedtler*:¹⁴

(...) The Secretary-General correctly stated: '[Mr. Staedtler] should not be permitted to introduce new arguments at this stage of the proceedings, and furthermore, [...] it is not reasonable for [Mr. Staedtler] to assert that the UNDT erred on questions of fact or law with respect to allegations, which were not raised before the UNDT for its consideration.'

(...) We find that these issues were not submitted before the court of first instance and therefore cannot be raised for the first time on appeal. Accordingly, we rejected Mr. Staedtler's arguments.

37. As elaborated above, Mr. Abu Hatab had ample time to submit a request for leave to file additional observations and raise this argument before the UNRWA DT but decided not to do so. It follows that he is estopped from raising it for the first time on appeal.

38. However, even if Mr. Abu Hatab were permitted to introduce this argument at this stage of the proceedings, it must fail. Indeed, pursuant to paragraph 69 of PD/A/4/Part II/Rev. 7/Section I, "[i]nterview panels must consist of at least three and normally up to five members". In the present case, the fact that the signatures of the Area Education Officer and of the Chief Area Officer were missing on the interview panel's recommendation does not

¹³ Recruitment report of 6 April 2021.

¹⁴ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, paras. 24-25.

mean that they were not part of the interview panel or that they did not agree with its recommendation.

Judgment

38. The appeal is dismissed, and Judgment No. UNRWA/DT/2022/018 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 6th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar