



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2018-1180

**Elayyan
(Appellant)**

v.

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

Order No. 323 (2018)

1. On 16 April 2018, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency, respectively) issued Judgment No. UNRWA/DT/2018/025 in *Elayyan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. In its Judgment, the UNRWA DT found that the decision not to select Mr. Fawzi Salameh Elayyan who holds a post at the Grade 15-level for a post classified at Grade 17 was tainted by significant procedural irregularities. It rescinded the contested non-selection decision and ordered an award of in-lieu compensation in the amount of USD 2,000.

2. Mr. Elayyan appealed the Judgment on 20 May 2018 to the United Nations Appeals Tribunal (Appeals Tribunal) challenging the amount of compensation awarded and arguing that the correct calculation should be based on the difference in salary between Grades 15 and 17 and all related indemnities.

3. Together with his appeal, Mr. Elayyan filed a motion seeking leave to adduce additional evidence. In support of his request, he submits that since the responsibility to calculate the amount of compensation rests with the UNRWA DT, there has neither been a chance nor a necessity to submit essential documents to determine the correct amount

of compensation, which would put Mr. Elayyan in the condition he would be in had the procedural irregularity in the selection process not occurred. Therefore, he seeks to introduce “supplementary evidence, including his payslips, salary scale and vacancy announcement, which indicate [the] difference between salaries of Grade 15 and Grade 17, likewise special occupation allowances and provident fund entitlements, helping to determine an adequate amount of compensation”.

4. On 31 May 2018, the Commissioner-General filed his comments on the motion. He asserts that Mr. Elayyan has not demonstrated any exceptional circumstances warranting leave to file additional evidence. The Commissioner-General contends that the evidence that Mr. Elayyan wishes to adduce should have been presented at the level of the UNRWA DT and that some of the documents he seeks to introduce, such as the vacancy announcement, are indeed already part of the record. In light of the aforesaid, he requests that the motion be rejected.

5. Pursuant to Article 2(5) of the Statute of the Appeals Tribunal and Article 10(1) of its Rules of Procedure, the Appeals Tribunal may receive additional evidence from a party “[i]n exceptional circumstances” “if that is in the interest of justice and the efficient and expeditious resolution of the proceedings” and if “the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence” unless such evidence “was known to either party and should have been presented at the level of the Dispute Tribunal”.

6. In the present case, the additional evidence which Mr. Elayyan seeks to introduce (payslips, salary scale) goes, *in abstracto*, toward corroborating his claim on appeal that the UNRWA DT erred in the calculation of the awarded in-lieu compensation. He further states that the necessity—and concomitantly the relevance of the additional evidence—was not existent at the time of his submissions to the UNRWA DT and turned up once the UNRWA DT Judgment was issued.

7. Given that Mr. Elayyan’s appeal challenges the amount of in-lieu compensation awarded to him, and the evidence sought to be adduced by him revolves around the question of the legality of the calculation of the awarded in-lieu compensation and allows for its full and fair assessment, we find that the motion should, with respect to the production of the payslips and salary scale, be granted in the interest of justice. The

Appeals Tribunal will decide upon the actual relevance of the additional evidence when it considers the case.

IT IS HEREBY ORDERED that Mr. Elayyan's motion **IS GRANTED**.

IT IS ALSO ORDERED that the motion and adduced payslips and salary scale, as well as the Respondent's comments thereon, shall be part of the record before the Appeals Tribunal during its consideration of the case.

Original and Authoritative Version: English

Dated 5th day of June 2018 in Athens, Greece.

(Signed)
Judge Dimitrios Raikos,
Duty Judge

Entered in the Register on this 5th day of
June 2018 in New York, United States.

(Signed)
Weicheng Lin, Registrar