



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2021-1643

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

ORDER No. 442 (2022)

1. On 4 November 2021, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively) issued Judgment No. UNRWA/DT/2020/054 (UNRWA DT Judgment) in the case of *El-Mussader v. Commissioner-General of the UNRWA*. The Dispute Tribunal dismissed the Appellant's application challenging the decision not to shortlist him for the position of Manager, Organization Design and Compensation Services (P-4).
2. On 15 December 2021, the Appellant, represented by the UNRWA Office of Legal Assistance (LOSA), filed an appeal on the above judgment. On the same day, he filed a Motion for Leave to file Additional Evidence. The Commissioner-General filed his comments on the Motion on 4 January 2022.
3. The Appellant's additional evidence is that the recruitment process described in paragraph 32 of the UNRWA DT Judgment is contrary to the practice that only after shortlisting is additional evidence requested from the candidates.

4. In his comments to the Motion, the Respondent submitted that there was no merit to the request for leave to file additional evidence and requested the motion to be dismissed.

5. The Appeals Tribunal may admit additional evidence, in terms of Article 2(5) of the Appeals Tribunal Statute (Statute) and Article 10(1) of the Appeals Tribunal Rules of Procedure (Rules) where an applicant shows: i) exceptional circumstances; ii) it will be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive the additional evidence; and, iii) the evidence was not known to either party and should have been presented at the UNRWA DT level.

6. The UNAT has consistently held that, where an additional pleading merely consists of supplementary arguments to those already submitted in an appeal or answer, there are no “exceptional circumstances” which would allow the admission of the additional argument”.¹

7. In the present motion, the Appellant does not address the “exceptional circumstances” or “the interest of justice and the efficient and expeditious resolution of the proceedings” principles in his motion, which is necessary to justify the submission of additional evidence. There is no indication that the evidence in question is new, was not known to either party or could not have been presented to the UNRWA DT.

8. Also, the Appellant mischaracterizes the UNRWA DT’s findings at paragraph 32 of the UNRWA DT Judgment which does not “describe” the recruitment process or procedures. Rather, in that paragraph, the Tribunal “noted” that information listed in Annex 4 of the application was not part of the Appellant’s application and “therefore obviously not taken into consideration when the contested decision was taken”. This was a finding of fact on what was taken into consideration in the Appellant’s candidacy for the position.

IT IS HEREBY ORDERED that the Appellant’s motion seeking leave to file additional pleadings **IS DENIED**.

¹ *McCloskey v. Secretary-General of the United Nations*, UNAT Order No. 173 (2014), para. 6. See also *Nouinou v. Secretary-General of the United Nations*, UNAT Order No. 339 Corr. (2019), para. 6; *Leonid Dolgoplov v. Secretary-General of the United Nations*, UNAT Order No. 396 (2021).

Original and Authoritative Version: English

Dated this 7th day of February 2022
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
Duty Judge

Entered in the Register on this 7th day
of February 2022 in New York, United States.

(Signed)
Weicheng Lin,
Registrar