



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

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**Elayyan**  
**(Appellant/Respondent on Cross-Appeal)**

**v.**

**Commissioner-General**

Case No.: 2018-1180

Date: 26 October 2018

Registrar: Weicheng Lin

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... The Interview Panel was comprised of the Chief Area Officer (“CAO”), North Amman, the Chief[,] Technical and Vocational Education and Training (“C/TVET”), the Deputy Chief[,] Field

standing and that therefore, Mr. Elayyan's chances of being selected to a higher grade would have been significant, had the Interview Panel been properly constituted.

5. On 20 May 2018, Mr. Elayyan filed his appeal. Together with his appeal, Mr. Elayyan filed a motion seeking leave to adduce additional evidence. On 31 May 2018, the Com08i1473 Tw.5(2018, 8 )5T\*.01Do, 8

### **The Commissioner-General's Answer**

9. The Commissioner-General contends that the UNRWA DT did not err in law or fact in awarding compensation in the amount of USD 2,000 in lieu of rescission. He, however, points out that he will challenge, in his cross-appeal, the basis for the award and contend that the UNRWA DT erred in law and fact.

10. The appeal reflects a misapprehension of the scope of awards under Article 10(5) of the UNRWA DT Statute and the different purposes the awards under that provision are intended to serve. The appeal relates to an award under Article 10(5) (b) of the UNRWA DT Statute which provides for compensation for harm supported by evidence, whereas the UNRWA DT set an amount of compensation in lieu of rescission under Article 10(5) (a) of the UNRWA DT Statute. The UNRWA DT did not award compensation for economic loss, including loss of salary. Rather, the UNRWA DT awarded compensation in lieu of rescission which does not constitute compensatory damages based on economic loss. Given that Mr. Elayyan did not seek loss of salary or "related benefits" in his application before the UNRWA DT, these elements cannot now be introduced at the appeal stage "disguised as compensation in lieu of rescission". Moreover, it is well established jurisprudence that when compensation has not been requested, none should be awarded.

11. The remedies sought by Mr. Elayyan have no legal basis. He has not shown a reversible error by the UNRWA DT and as such, there is no legal basis for the plea to enhance the compensation awarded in lieu of rescission. Assuming *arguendo* that a case for an enhanced award had been made out, which the Commissioner-General rejects, the basis for a 24-month award is misconceived as it ignores the possibility that Mr. Elayyan would not have served out the full 24 months of the contract for various reasons, such as abolition of post, illness, resignation or "private business".

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

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

13. The UNRWA DT erred in law by finding that the written test scores were the determining evaluation method in the selection of the successful candidate and thereby erroneously concluded that the difference in the scores between the selected candidate and Mr. Elayyan was small. As

provided for in the Jordan Field revised interim procedures referred to by the Interview Panel in its report, the written test results are only invoked,

**Mr. Elayyan's Answer to the Commissioner-General's Cross-Appeal**

17. The Commissioner-General's cross-appeal is in contradiction with his recent actions taken to implement the impugned Judgment. By e-mail to Mr. Elayyan dated 27 July 2017 [sic.], the Agency advised Mr. Elayyan that it had chosen not to rescind the non-selection decision and to pay him in-lieu compensation. Mr. Elayyan replied on 28 July 2018, refusing the offer because, in his view, the amount of compensation had been miscalculated. The Commissioner-General misled Mr. Elayyan by offering him compensation while at the same time appealing the UNRWA DT Judgment. The cross-appeal is therefore a waste of resources since the Commissioner-General already agreed with the outcome of this case and expressed his readiness to pay compensation.

18. The Commissioner-General merely repeats his arguments that did not succeed before the UNRWA DT and has not provided any evidence proving that the UNRWA DT erred in fact or law or exceeded its competence.

19. The Commissioner-General's contention that the Interview Panel was unanimous and the HR representative's vote would not have changed the outcome of the selection process is mere speculation and unsubstantiated. The proper staff selection procedures pursuant to Area Personnel Directive PD A/4/PartII/Rev.7/Section I were not followed as the HR representative did not have voting rights and there is no provision in the Directive establishing whether and how much the HR representative's vote is weighed. The Commissioner-General had the burden of proof to substantiate his claim and has failed to do so in his cross-appeal. Moreover, PD A/4/PartII/Rev.7/Section I assigns an essential role to the HR representative which is to ensure that all interviews evaluate candidates fairly and consistently throughout the interview process. Thus, the presence of a voting HR representative was necessary to ensure a fair and consistent evaluation process. Therefore, the entire selection process is affected, not only in terms of voting, but also in terms of monitoring the compliance with the UNRWA Regulations and Rules, and thus is void.

20.

if applicable, performance scores on any other candidate assessment tool, the interview assessment scores and the candidate's references. In the present case, Mr. Elayyan scored the highest mark in the technical test that was supposed to assess the competencies required for the job, while the selected candidate ranked third. The Interview Panel, however, failed to include the written test scores as part of the applicants' final scores and thereby violated the formal procedures of calculating the assessment scores. The Interview Panel also failed to add past technical experience as well as technical performance appraisals to the final accumulative score.

21. Mr. Elayyan requests that the Appeals Tribunal dismiss the cross-appeal in its entirety.

**Mr. Elayyan's Motion for Supplementary Evidence**

22. Mr. Elayyan seeks leave to file supplementary evidence in relation to his answer to the cross-appeal. Mr. Elayyan submits that, before filing its cross-appeal, the Agency had already taken action to implement the UNRWA DT Judgment. He refers to an e-mail dated 27 July 2018 by which the Agency advised Mr. Elayyan that it had chosen not to rescind the non-selection decision and to pay him in-lieu compensation. A letter regarding the implementation of the UNRWA DT Judgment was attached to that e-mail. Mr. Elayyan replied on 28 July 2018, refusing the offer because, in his view, the amount of compensation had been miscalculated. Mr. Elayyan now seeks to submit as evidence the aforementioned communication. He contends that the Agency's actions misled him since the Agency was offering compensation while, at the same time, appealing the UNRWA DT Judgment. The cross-appeal therefore wastes time and resources of the Appeals Tribunal and the UNRWA Legal Office of Staff Assistance.

**The Commissioner-General's Comments on Mr. Elayyan's Motion for Supplementary Evidence**

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the decision not to select Mr. Elayyan and, in the alternative, pursuant to Article 10(5)

31. Such compensation is completely different from the compensation regulated by Article 10(5) *(b)* of the UNRWA DT Statute, which compensates the victim for the negative consequences caused by the illegality committed by the Administration.<sup>5</sup>

32. Article 10(5) *(b)* provides:

37. We find no merit in the cross-appeal. PD A/4/PartII, paragraph 69, provides that “[i]nterview 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 ... The representative of the Recruitment Administrator will be a voting member.”

38. We agree with the finding of the UNRWA DT that the absence of a representative of the Recruitment Administrator with voting rights rendered the composition of the Interview Panel irregular. Compliance with that requirement is

**Judgment.**

41. The appeal and cross-appeal are dismissed. Judgment No. UNRWA/DT/2018/025 is affirmed.

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