



Judgment No. 2018-UNAT-818



Counsel for Mr. Kawamleh:

Self-represented

Counsel for Commissioner-General:

Rachel Evers

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/026, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 19 June 2017, in the case of *Kawamleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mohammad Fayez Kawamleh filed the appeal on 18 August 2017, and the Commissioner-General filed an answer on 18 October 2017.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... Effective 1 November 2006, the Applicant was employed by the Agency as a Project Manager Shelter at the Engineering and Construction Services Department

recommended that he submit a request for protection against retaliation with the Ethics Office in the event he believed that he may have been the subject of retaliation.

... By email dated 24 February 2016, the Applicant complained to the Department of Internal Oversight Services (“DIOS”) with regard to the recruitment process. The Applicant offered that it was the same person who had prepared the test questions and the model answers, and then subsequently had scored the test too. Furthermore, the Applicant claimed that the test was tailored, and that the recruitment process was modified beforehand. He specified that if anyone looked at the test results, it would be obvious that the test was shared with certain individuals before the exam.

... Following the complaints, the H/FHRO cancelled the first written test.

... By email dated 29 February 2016, the Applicant was invited for another written test to take place on 3 March 2016. By email sent on the same day, the Applicant declined to take part in the second test noting that he had “no faith in our current written test process or its transparency”.

... On 11 March 2016, the Applicant sent another email to the DIOS referring to his previous email sent on 24 February 2016, and attaching two more documents.

... By email dated 28 March 2016, the Chief, Investigations Division, DIOS informed the Applicant that the DIOS would not undertake further action in relation to his complaint as there was no evidence that the initial test was anything other than a mistake and a new test had been issued with increased confidentiality and parameters.

... On 6 April 2016, by email to the Chief, Investigations Division, DIOS, the Applicant contested [his] decision.

... By email to the Director of Human Resources, dated 22 April 2016, the Applicant requested the review of “the decisions made by the HR-WB [Human Resources – West Bank] and the DIOS at HQ [Headquarters] Amman (“HQA”)”. The Agency did not provide a response.

... On 18 August 2016, (...) [an] application [contesting the Agency’s decisions “1) to manually include other candidates and overrule the computer’s automatic short-list for the post of Deputy Head of Field Logistics Officer; 2) to conduct the first

3. The UNRWA Dispute Tribunal rendered its Judgment on 19 June 2017, dismissing the application in its entirety. The UNRWA DT considered that Mr. Kawamleh had no standing to contest the Agency's decisions regarding the first written test because individual steps or findings in a selection process may only be challenged in the context of an appeal against the outcome of a selection process. The first selection exercise, however, was cancelled and thus never completed and there was no chance for selection for the position in question. With respect to the second selection process, the UNRWA DT found that Mr. Kawamleh was unable to contest the Agency's decision to conduct a second selection exercise for the same post as he himself had voluntarily decided not to participate in the second written test. The UNRWA DT further held that, while it had the power to clarify the scope of an application when necessary, there was no clear indication that Mr. Kawamleh, in his application, had sought judicial review of the Agency's decision to close his complaint to the DIOS about the first selection process.

4. As stated above, on 18 August 2017, Mr. Kawamleh filed an appeal with the Appeals Tribunal and on 18 October 2017, the Commissioner-General filed his answer.

5. On 4 December 2017, the Appeals Tribunal issued Order No. 303 (2017), denying a motion filed by Mr. Kawamleh seeking leave to file additional pleadings for lack of exceptional circumstances.

### **Submissions**

#### **Mr. Kawamleh's Appeal**

6.

**The Commissioner-General's Answer**

9. The Commissioner-General submits that Mr. Kawamleh's appeal fails to identify any of the grounds of appeal set out in Article 2(1) of the Statute of the Appeals Tribunal (Statute) and that he merely reargues his case. Moreover, Mr. Kawamleh introduces new elements for consideration, notably his separation following the expiration of his contract, that were not put forward at the UNRWA DT level and are, thus, inadmissible on appeal.

10. The Commissioner-General further argues that the UNRWA DT did not commit an error of fact or law which would require a reversal of the UNRWA DT Judgment. In particular, the UNRWA DT correctly identified the scope of Mr. Kawamleh's application, was cognizant of the relevant jurisprudence, and correctly concluded that Mr. Kawamleh had no standing to contest the first and second selection processes and that he did not seek judicial review of the decision to close his complaint.

11. Moreover, the Commissioner-General submits that the remedies sought by Mr. Kawamleh have no legal basis. In particular, the plea for moral and material damages was not before the UNRWA DT and therefore includes new elements, which may not be introduced for the first time on appeal. In any case, Mr. Kawamleh has not presented any evidence to support his compensation claim.

12. Based on the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

**Considerations**

13. The UNRWA DT in its Judgment dismissed Mr. Kawamleh's application which contested the following decisions of the Agency: 1) to manually include other candidates and overrule the computer's automatic short-list for the post of D/HFLO; 2) to conduct the first written test without participation of the hiring department; 3) to subsequently cancel the

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