



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

Judgment No. 2019-UNAT-947



**El Madhoun
(Respondent/Applicant)**

v.

Commissioner-General

Date: 25 October 2019

Reg

Counsel for Mr. El Madhoun: Self-represented

Counsel for Commissioner-General: Rachel Evers

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2019-UNAT-947

Mr. El Madhoun had requested to be placed into evidence. The Agency had reviewed all candidates and had created a long-list and then a short-list. Having reviewed all of the candidates, including Mr. El Madhoun, the Agency short-listed only those candidates who held the relevant university degree. The UNRWA DT, however, did not order the Commissioner-General to produce the long-list for this selection process.

6. The UNRWA DT's rescission order was predicated on the conclusion that the Agency had not properly applied the criteria described in the vacancy announcement. This conclusion constitutes an error in fact and law as the process complied with PD A/4/Part II/Rev.7/Section 1/Amend. 1, the UNRWA Area Staff Selection Policy (Staff Selection Policy). There is no right to be short-listed and discretion lies with the Agency. The Judgment is, therefore, a manifestly unreasonable curtailment of the Agency's discretion. By concluding that the Agency was obliged to consider as equals those fully meeting the educational requirements and those meeting the requirements on equivalency, the UNRWA DT introduced a requirement that was contrary to the Staff Selection Policy and, therefore, exceeded its jurisdiction.

Mr. El Madhoun's Answer

7. Mr. El Madhoun did not file an answer.

Considerations

8. The UNRWA DT held that the selection process was unlawful and had to be rescinded for two reasons: (i) the Commissioner-General did not provide any compelling reasons for not having examined whether the experience of Mr. El Madhoun would have offset his lack of a university degree; and (ii) by doing so, the Agency did not apply properly the criteria described in the vacancy announcement.

9.

relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

In non-selection matters, our jurisprudence has established, in accordance with the principles recalled above, that:⁴

... Judicial review of a staff selection decision is not for the purpose of substituting the Dispute Tribunal's selection decision for that of the Administration. Rather, as we stated in *Abais*, the Dispute Tribunal's role in reviewing an administrative decision regarding an appointment is to examine: "(1) whether the procedure laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration". The role of the UNDT is "to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner.

... As the Appeals Tribunal has explained, the starting point for judicial review is

12. We must therefore conclude that the UNRWA Dispute Tribunal erred in fact in considering that the Agency did not examine whether the experience of Mr. El Madhoun could offset his lack of a university degree.

13.

THE UNITED NATIONS APPEALS TRIBUNAL