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**Judgment No. 2024-UNAT-1424**



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<b>Before:</b>	<b>Judge Leslie F. Forbang, Presiding</b> <b>Judge Gao Xiaoli</b> <b>Judge Abdelmohsen Sheha</b>
<b>Case No.:</b>	<b>2023-1779</b>
<b>Date of Decision:</b>	<b>22 March 2024</b>
<b>Date of Publication:</b>	<b>30 April 2024</b>
<b>Registrar:</b>	<b>Juliet E. Johnson</b>

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**Counsel for Appellant:** Amer Abu-Khalaf, LOSA

**Counsel for Respondent:** Natalie Boucly

1. Ms. Amal Ali El Khaled contested a decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) not to accede to her request for transfer to the General Fund post of Finance Assistant, Grade 10, at the Field Finance Office (FFO), Lebanon Field Office (LFO), UNRWA (contested decision).
2. By Judgment No. UNRWA/DT/2022/055, the UNRWA Dispute Tribunal (UNRWA DT) dismissed the application (impugned Judgment).<sup>1</sup>
3. Ms. El Khaled lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.
5. Ms. El Khaled was employed by the Agency on a fixed-term appointment as Accounting Assistant, Grade 10, Step 14, at Field Infrastructure & Camp Improvement Programme (FICIP), LFO.<sup>3</sup> She had joined the Agency on 1 July 2011 which was the date of her entry on duty (EOD).
6. On 11 July 2016, Ms. El Khaled submitted a request for transfer to the post of Finance Assistant.<sup>4</sup> She indicated that her reason for seeking a transfer was to move from her project-funded position to a regular budget position. This transfer request was rejected.
7. In July 2019, two other candidates submitted requests for transfer to the posts of Finance Assistant.<sup>5</sup> Their EOD dates were 1 April 2017 and 1 January 2018. Both candidates held the post of Finance Assistant when they requested the transfer, and both stated that their reason for seeking a transfer was to move from their project-funded position to a regular budget position.

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20. The UNRWA DT noted that Ms. El Khaled was the most senior of the candidates, which would have given her priority of the post had the Agency limited its assessment of the competing transfer requests to the criteria set out in paragraph 9(a) of UNRWA LFO Field Technical Instruction 01/2016 (Lateral Transfers Initiated at the Request of Staff Lebanon Field Office) (FTI 01/2016). However, the Agency did not base its assessment on these criteria. In light of the multiple transfer requests, the Field Human Resources Officer properly consulted with the hiring department regarding the candidates' suitability, as required under paragraph 14. The hiring department did not recommend her for the position because her duties as an Accounting Assistant were different from the duties of a Finance Assistant, and they sought a candidate more familiar with the duties of the position. The operational needs of the hiring department were the decisive factor in finding the other two candidates more suitable for the position. The Agency is authorized under paragraphs 14 and 15(b) of FTI 01/2016 to base its assessment on the candidates' suitability for the post instead of the criteria of seniority, compelling reasons, and performance evaluations set out in paragraph 9(a).

21. The UNRWA DT found, moreover, that even assuming that Ms. El Khaled had been fully qualified for the post, it was not able to find that preferring candidates with prior experience in the exact role had been so unreasonable as to constitute an abuse of discretion. She has not shown that the hiring department's assessment of the three candidates' relative suitability was unreasonable, biased, or unfair. She has failed to sustain the burden of proof required to establish that the decision not to transfer her was arbitrary or capricious, motivated by prejudice or other extraneous factors or flawed by procedural irregularity or error of law.

22. On 22 January 2023, Ms. El Khaled filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 31 March 2023.

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irregularity of the contested decision. The UNRWA DT failed to appreciate the policies that govern the transfer of staff members. As regards seniority, she joined the Agency in 2007 and the other two candidates joined in 2017 and 2018. The UNRWA DT also failed to mention the status of the other two staff members, it did not state whether they were engaged with the Agency under a fixed-term or daily paid contract.<sup>15</sup>

25. Ms. El Khaled contends that the UNRWA DT misjudged her operational skills in finding that the other two candidates had superior operational skills. It ignored the Commissioner-General's statement that in 2014 she "participated in a recruitment process for the positions of both 'Finance Assistant' and 'Cashier' [and] was found to be suitable for both positions and recommended as the third candidate in relation to the 'Finance Assistant' position".<sup>16</sup>

28. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal.
29. The Commissioner-General argues that Ms. El Khaled fails to demonstrate any discernible error in the impugned Judgment. Her arguments do not constitute more than a general dissatisfaction with the impugned Judgment.
30. The Commissioner-General submits that Ms. El Khaled fails to demonstrate that the UNRWA DT erred in law in interpreting the transfer policy and applying it to the facts. The relevant documentation demonstrated that all three staff members seeking the transfer had indicated in their requests the same compelling humanitarian reason, namely the wish to have their posts regularized under the regular programme budget. The e-mail exchange between the hiring department and the Field Human Resources Office demonstrated the view of the hiring department that the other two candidates' skill sets made them immediately operational in the position, whereas Ms. El Khaled's role at the time differed significantly from the position of Finance Assistant in terms of duties and responsibilities.
31. The Commissioner-General contends that Ms. El Khaled's argument that the Agency failed to take into account her ill health is without merit. She tried to place before the UNRWA DT evidence that was not available to the Administration at the time the contested decision was taken. The UNRWA DT correctly confined its assessment of the facts to those known by the Agency at the material time.
32. The Commissioner-General argues that Ms. El Khaled fails to demonstrate that the UNRWA DT erred in fact by ignoring decisive facts. Her arguments are misconceived. She does not point to any piece of evidence before the UNRWA DT that it failed to consider. Her assertion that the Agency should have been aware of her diagnosis because her doctor was also a staff member of the Agency is misplaced.
33. The Commissioner-General submits that Ms. El Khaled fails to demonstrate that the UNRWA DT erred in fact when it did not find that the Administration's assessment of her skill set was biased. Her submissions with respect to her participation in a 2014 recruitment process are irrelevant to the question of whether the contemporaneous operational needs of the Finance Department in 2022 were such as to prefer the transfer of candidates who were at

34. In the instant case, we are satisfied that all the relevant facts have been established and sufficiently dealt with at the first instance, and there is no need for additional findings of fact in this matter.<sup>18</sup> Further, the Appellant has failed to show that a decision cannot be taken without oral testimony or other forms of non-written evidence to cause this Tribunal to remand the case to the Dispute Tribunal.



38. The Appeals Tribunal has confirmed in <sup>21</sup> and in a multitude of cases that “as a matter of general principle, in exercising its judicial review, the Dispute Tribunal will not lightly interfere with the exercise of managerial discretion in matters such as staff transfers”.

39. Nevertheless, in <sup>22</sup> the UNAT found that “an administrative decision not to appoint, promote, or transfer can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently”. The UNAT held that the “staff member has the burden of proving such factors played a role in the administrative decision”.<sup>23</sup>

40. In <sup>24</sup>, the Appeals Tribunal further noted:<sup>24</sup>

(...) When judging the validity of the Administration’s exercise of discretion in administrative matters, (...) the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The first instance Judge can consider whether relevant matters have been ignored and irrelevant matters considered, and also

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prior experience in the exact role in this case was not so unreasonable as to constitute abuse of discretion.

50. Further, by contacting the Appellant on 19 August 2021 to enquire about her interest in transferring to the post of Finance Assistant, the Field Human Resources Officer had complied with the mandatory procedural requirement in considering multiple transfer requests for the same post, as spelled out in paragraph 14 of FTI 01/2016. Thus, the procedure by which the Agency arrived at its decision to deny the Appellant's request was legal.

51. Additionally, the principles of staff selection in broader terms support the approach of the UNRWA DT and this Tribunal to the exercise of discretion in deciding on such requests. In , the Appeals Tribunal held that the considerations of the Administration may include those not explicitly listed in the governing issuance, provided that the considerations are "rationally connected to the power of the Secretary-General to secure the highest standards of efficiency, competence and integrity in making appointments", noting that:<sup>29</sup>

(...) [I]n exercising its discretion to make a selection, the Administration is not restricted to factors or considerations explicitly listed in any governing legal instrument. It may



60. Ms. El Khaled's appeal is dismissed, and Judgment No. UNRWA/DT/2022/055 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22<sup>nd</sup> day of March 2024 in New York, United States.