

UNDT/2009/013, Parker

UNAT Held or UNDT Pronouncements

UNDT rejected the UNHCR's allegation that the rescission request to the Joint Appeals Board (JAB) was inadmissible as time-barred. In light of ST/AI/2005/12, UNDT found that the Director of UNHCR Medical Service had the authority to convoke the Applicant at any moment to undergo a medical examination to verify whether his state of health permitted him to discharge the functions he was assigned to. UNDT noted that the Applicant fell ill and was placed on sick leave for an indefinite period by his personal doctor following an incident with his supervisor which occurred on 8 October 2007. UNDT found that the procedure which led to the contested decision was flawed, to the extent that it did not respect the essential right of the staff member to be informed in advance of the motives behind decisions made in function of his person and notably in function of his state of health. UNDT found illegal the decision by which the UNHCR rescinded the appointment of the Applicant as SDO on MENA as it was vitiated by a procedural flaw. UNDT ordered the rescission of the contested decision or, in the alternative, payment of compensation of two months' net base salary. UNDT further ordered compensation for moral damage. Regarding the Applicant's request to be compensated for the damage caused to his career development, UNDT found that the request was receivable concerning the damage that he alleged to have suffered during the period from January 2005 to 7 November 2007. UNDT rejected the UNHCR's allegation that no request for administrative review had been submitted regarding this issue and found that UNHCR had to enter into the merits of the Applicant's request before it could pass judgment on this issue. Thus, UNDT ordered UNHCR to submit within one month as from the notification of the present judgment its observations regarding the reported facts. Regarding the request for written apologies and to be placed against a post, UNDT found that there was no provision in the UNDT Statute allowing the Judge to issue such a decision.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision by which the United Nations High Commissioner for Refugees (UNHCR) rescinded his appointment as Senior Desk Officer (SDO) on the Middle East and North Africa Desk (MENA) on medical reasons. The Applicant further requested to be provided with a written apology explaining that the Applicant having to vacate the SDO post with the Desk for East and Horn of Africa (DEHA) and with MENA was not due to any fault on his part and to be placed in a suitable post within 6 months. The Applicant sought reparation amounting to five years of salary for the harm caused to his career and reputation and for the stress and anxiety he suffered.

Legal Principle(s)

A staff member must be informed in advance of the motives behind decisions made in function of his person and notably in function of his state of health.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Parker

Entity

UNHCR

Case Number(s)

UNDT/GVA/2009/007

Tribunal

UNDT

Registry

Geneva

Date of Judgement

26 Aug 2009

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/2005/12

Former Staff Rules

- Rule 106.2(g)
- Rule 111.2(a)

GA Resolutions

- A/RES/63/253

UNDT RoP

- Article 26
- Article 31

UNDT Statute

- Article 10.5