

# **UNDT/2010/042, Gomez**

## **UNAT Held or UNDT Pronouncements**

Break in service: The Tribunal has not found a policy on mandatory breaks in service and no document has been produced recording it. The respondent has failed to demonstrate a consistent application of the practice of enforced separation between temporary contracts. Further, there was a deliberate delay in progressing the appointment of the applicant which was to her detriment. Compensation: The applicant is to be placed in the position as if there had been no such break in service in May 2008. The manner in which the applicant was treated, aggravated by the exercise of an abuse of power, caused the applicant considerable distress, anxiety and uncertainty regarding her benefits upon retirement. The Tribunal is required first to assess the degree to which she suffered injury to her feelings aggravated by the high handed behaviour and misuse of power by the Chief of Human Resources. Having done so, the Tribunal is required to place a monetary value on this to compensate the applicant. Although the distress was considerable it was not at the extreme top end of the scale of awards that may be made in such cases. Outcome: The applicant's claim succeeds. The respondent is ordered to pay to the applicant the equivalent of two months' net base salary for distress and emotional injury. The parties are ordered to attempt to agree a remedy which place the applicant in the position that she would have been had she not been required to take a break in service in May 2008. The parties are to file a joint submission stating whether they have reached an agreement on compensation.

## **Decision Contested or Judgment/Order Appealed**

The applicant was selected for a temporary post. Her assignment ended when the incumbent of the post returned from mission.

## **Legal Principle(s)**

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Gomez

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2009/058/JAB/2009/002

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

12 Mar 2010

## Duty Judge

Judge Meeran

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Temporary appointment

Compensation

Non-pecuniary (moral) damages

## Applicable Law

Former Staff Rules

- Rule 104.14

Secretary-General's bulletins

- ST/SGB/2008/5

## Related Judgments and Orders

UNDT/2009/075