

UNDT/2010/071, Hastings

UNAT Held or UNDT Pronouncements

Outcome: For distress: USD5,000. For loss of chance: (a) 10 percent of the difference between the salary the applicant actually carries and that she would have received in the D-2 position on a continuous basis, (b) 10 percent of any additional allowances and benefits she would have received at the D-2 level including adjustment of her pension contributions and consequent retirement benefits.

Decision Contested or Judgment/Order Appealed

The applicant applied to the Secretary-General for an exception to be made to administrative instruction ST/AI/2006/3 to allow her to apply for a D-2 position that was more than one level higher than her P-5 personal grade, which was refused. At the time of the application she was receiving a D-1 special post allowance (SPA) as she was encumbering the acting position for which she wished to apply.

Legal Principle(s)

The scheme of article 10.5 of the Statute: The objective is to provide at least two remedies: the first in 10.5(a) is a remedy either in kind by way of rescission or specific performance or monetary compensation in lieu; the second is in 10.5(b). Although not expressly stated in the Statute it may reasonably be inferred from its context that compensation under 10.5(b) is to compensate an applicant for losses other than the more easily quantifiable material losses available under article 10.5(a), i.e., adverse but non-material consequences of a legal wrong. The common characteristic of such compensation is that it is a means by which harm caused to a person by a legal wrong is assessed according to that person's characteristics. Some basic principles: (a) compensation can be awarded when identifiable harm to an individual is caused by a legal wrong or unlawful act (a question of causation); (b) where causation is established, the amount of compensation should be

proportionate to the degree of harm suffered (a question of evidence). A person seeking an award of non-material compensation must present some evidence of the adverse effects on him or her of the legal wrong. The extent of damages may be influenced by the motivation of the decision-maker. Compensation for loss of chance. Determined in this case on the balance of probabilities regarding each step of the selection process and expressed in percentages.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Hastings

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/087/JAB

Tribunal

UNDT

Registry

New York

Date of Judgement

28 Apr 2010

Duty Judge

Judge Shaw

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Staff Rules

- Rule 112.2(b)