

# UNDT/2010/122, Zerezghi

## UNAT Held or UNDT Pronouncements

The Tribunal found that the evidence adduced by the respondent did not sufficiently support the charge that the applicant had not paid for three tickets issued to him by MCM and that, accordingly, the applicant should be given the benefit of the doubt in respect of this charge. About the applicant's unauthorized absences from the mission area, the Tribunal held that, taking into account the specific circumstances of the case, a dismissal was disproportionate to the offence and that a written censure would be an appropriate measure. The Tribunal found that the applicant's due process rights had been respected throughout the investigation and disciplinary proceedings. It held that under the former Staff Rules and ST/A1/371, it was only when a staff member was charged with misconduct that he or she became entitled to specifically enumerated due process rights, i.e. the right to be informed in writing of the charges, the right to receive a copy of the documentary evidence and the right to seek the assistance of counsel in his or her defence. No such rights existed during the investigation. Outcome: Under article 10.5 (a) of the Statute, the Tribunal ordered the rescission of the contested decision, the reinstatement of the applicant with retroactive effect and the issuance of a written censure. The amount of compensation to be paid as an alternative to the rescission and specific performance was set at eight months' net base salary (i.e. the amount of salary the applicant would have received until the expiration of his last fixed-term appointment, had he not been dismissed). The Tribunal also awarded moral damages under article 10.5 (b). In view of the stigma of being imposed the most severe disciplinary measure and the resulting difficulties in finding further employment, the Tribunal set the appropriate amount at USD60,000, which corresponds approximately to 12 months of the applicant's net base salary. The Tribunal further ordered that all material relating to the applicant's dismissal be removed from his official status file, with the exception of the judgment and any subsequent action taken by the Administration to implement it.

## Decision Contested or Judgment/Order Appealed

The applicant, former Chief of the UNMIK Travel and Visa Unit, was dismissed from service after an ID/OIOS investigation found that he had travelled on three tickets issued to him free of charge by a UN contractor (MCM) and that he had left the mission area on three occasions without authorization and/or without ensuring that his attendance records correctly reflected his absences.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Zerezghi

## Entity

UNMIK

## Case Number(s)

UNDT/GVA/2010/062

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

11 Jul 2010

## Duty Judge

Judge Laker

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Due process

## Applicable Law

Administrative Instructions

- ST/AI/371

Provisional Staff Regulations and Rules

- Rule 10.2(a)(ix)
- Rule 10.3(b)

UNDT Statute

- Article 10.7

## Related Judgments and Orders

2010-UNAT-022