

UNDT/2010/194, Fayek

UNAT Held or UNDT Pronouncements

In the present judgment, UNDT found that, in light of the circumstances of this case, the three months' net base salary paid to the Applicant for the lack of due process on the recommendation of the JAB report was insufficient. UNDT found the procedural unfairness to be so grave that it warranted additional compensation in the amount of USD15,000 for the breach of the Applicant's procedural rights. With respect to compensation for actual economic loss, UNDT held that the Respondent shall compensate the Applicant for the actual economic loss incurred by her and that the actual economic loss should be based on the difference, for two years, between the actual salary, benefits and entitlements at the P-3 level and step held by the Applicant at the relevant time period and the salary, benefits, and entitlements that she would have received at the P-4 level and appropriate step. UNDT determined the actual loss in salary, benefits and entitlements (not including pension rights) suffered by the Applicant for which she should be recompensed to include (i) USD5,699, with interest, for the first year and (ii) USD8,565, with interest, for the second year. UNDT rejected the Applicant's claim for loss up to retirement in 2026 as too speculative. UNDT also ordered the Respondent to pay USD3,287 to the UN Joint Staff Pension Fund on behalf of the Applicant. UNDT found that the Applicant failed to prove to the Tribunal that she suffered emotional harm and, accordingly, ordered no compensation under this head.

Decision Contested or Judgment/Order Appealed

On 25 June 2010 the Dispute Tribunal issued Fayek UNDT/2010/113, finding that the decision not to select the Applicant for the contested P-4 level post was in violation of her right to full and fair consideration, that there was a causal connection between this violation and the Applicant's non-selection, for which she must be properly compensated. The parties were directed to file further submissions on compensation.

Legal Principle(s)

Compensation, generally: In assessing compensation, certain assumptions can be made, but they must be reasonable. A staff member cannot have an unqualified legitimate expectation to work in any organisation right up to her or his retirement age. In most cases such an expectation must be so heavily qualified by the contingencies of life, that, ordinarily, it will have little or no effect on any computation of damages. Interest rates: For sums determined by the Dispute Tribunal to be due prior to the rendering of its judgment, the applicable U.S. Prime Rate shall apply from the date the payment was due to the date of payment. The Respondent shall have 60 days from the date the judgment becomes executable to pay the sum ordered, in default of which an additional five per cent shall be added to the applicable U.S. Prime Rate. For sums determined by the Tribunal to be due from the date the judgment becomes executable, no interest shall apply before the judgment becomes executable. The Respondent shall have 60 days from the date the judgment becomes executable to pay the sum ordered, during which period the U.S. Prime Rate applicable as at that date shall apply. If the sum is not paid within this 60-day period, an additional five per cent shall be added to the U.S. Prime Rate until the date of payment.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Fayek

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2010/041/UNAT/1705

Tribunal

UNDT

Registry

New York

Date of Judgement

29 Oct 2010

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Compensation

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/1998/9

Former Staff Rules

- Rule 112.3

UNDT Statute

- Article 10.2
- Article 10.5
- Article 10.6

Related Judgments and Orders

UNDT/2010/113
2010-UNAT-059