

UNDT/2011/062, Diara

UNAT Held or UNDT Pronouncements

The Tribunal found that the Administration had erred in giving to the Applicant an appointment whose expiration date went well beyond his retirement age but that it duly rectified this error by separating him from service. It also found that the Applicant had been sufficiently compensated by the Respondent. Nature of contractual relationship: The contracts by which the Organization employs staff members are not regular contracts, given the particular relationship established between staff members and the Organization, and they are for the most part governed by the Staff Regulations and Rules. Administration's duty to correct its own errors: The Administration is bound to correct its own errors as soon as possible and, when no fault can be held against the staff member, it ought to bear the entire responsibility for those errors and compensate the staff member accordingly. Costs: The Tribunal may award costs against a party only where it is established that a party has manifestly abused the proceedings before it. In cases transferred from the old system of administration of justice, it may also award reasonable costs only if they are demonstrated to have been unavoidable and exceed the normal expenses of litigation before the Tribunal.

Decision Contested or Judgment/Order Appealed

With effect from 1 January 2004, the Applicant, who was then aged 59 and was due to retire at 60, was given a three-year fixed-term appointment. On 7 March 2005, he was informed that he was about to reach the mandatory retirement age, and, as a result, he was given a new appointment, whose expiration date was 30 April 2005. The Applicant challenged the decision to implement his separation from service in breach of contract and he was eventually compensated in the amount of three months' net base salary for the moral injury he suffered as well as for the late notice of his reaching retirement age.

Normal 0 false false false EN-GB X-NONE X-NONE /*
Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-

priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:8.0pt; mso-para-margin-left:0cm; line-height:107%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri",sans-serif; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;}

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Diara

Entity

UNOG

Case Number(s)

UNDT/GVA/2010/045

Tribunal

UNDT

Registry

Geneva

Date of Judgement

31 Mar 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Appointment (type)

Fixed-term appointment

Compensation

Non-pecuniary (moral) damages

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2003/8

Former Staff Regulations

- Regulation 9.5

Other UN issuances (guidelines, policies etc.)

- UNOG Guidelines on Separation from Service - Retirement

Related Judgments and Orders

2010-UNAT-037