

UNDT/2011/070, Squassoni

UNAT Held or UNDT Pronouncements

Receivability: Only the appeal of the compensation amount was receivable—the Respondent had already conceded to the selection processes being flawed, the Applicant's return to her liened post was not an administrative decision in itself, and the Applicant had defined a fourth decision too vaguely to give it any meaning.

Compliance with orders: Lacking a response from Counsel for the Applicant to a written order, the Tribunal determined that, due to his failure to comply with the order, by default the Tribunal would deem that the Applicant had agreed with the Respondent's contentions regarding non-receivability.

Specific performance: ST/AI/2002/4 (Staff selection system), sec. 9.3, permits the Tribunal to give specific performance to a right to be rostered, but the Applicant failed to identify any such right.

Compensation: In accordance with Antaki ("[c]ompensation may only be awarded if it has been established that the staff member actually suffered damages"), the focus of the case was on what damages the Applicant, in fact, suffered as a consequence of her not being fully and fairly considered for the two G-5 posts, and not on what may have motivated the relevant decision-makers to take the decisions which they did and how they then implemented these decisions, even if they deliberately attempted to harass or discriminate the Applicant.

Pecuniary harm: The Applicant failed to establish any such harm.

Non-pecuniary harm: In Antaki, the Appeals Tribunal outlined two specific incidences for which an applicant may be compensated for non-pecuniary harm, namely "stress" and "moral injury", but the Applicant failed to establish either.

Procedural violation: Under Antaki, the Tribunal cannot compensate an applicant for any breaches of her/his procedural rights if s/he is unable to demonstrate that s/he has suffered any concrete damage in result hereof.

Pension: A non-promotion during the career, if followed by the attainment by the staff member of his/her highest career level before three years prior to retirement would probably have no effect on pension.

Conduct of counsel: For proceedings before the UNDT, it is required that all counsel meet the standard of reasonable diligence in every respect when representing their clients in matters. Such an obligation includes, inter alia: (a) meeting deadlines imposed for making

submissions to the Tribunal; (b) presenting the required factual and legal foundations for all arguments made to the Tribunal; and (c) organizing arguments in a logical and cogent manner. The manner in which the Applicant's case was presented to the Tribunal in this case has caused additional work for the Tribunal (presumably also to Counsel for the Respondent), has frustrated the efficient handling of the case, has resulted in unnecessary delay, and may also have harmed consideration of the merits of the Applicant's matter. Outcome: Application dismissed.

Decision Contested or Judgment/Order Appealed

The JAB recommended that the Applicant be compensated with six months' net base salary for some shortcomings in the selection processes for two G-5 positions for which she had unsuccessfully applied. This recommendation was subsequently upheld by the Secretary-General, which, however, rejected to compensate her for her consequential return to her liened post. The Applicant appealed as she claimed that the awarded compensation was insufficient.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Squassoni

Entity

DPA

Case Number(s)

UNDT/NY/2010/032/AT/1670

Tribunal

UNDT

Registry

New York

Date of Judgement

13 Apr 2011

Duty Judge

Judge Kaman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/2002/4

Secretary-General's bulletins

- ST/SGB/2005/20
- ST/SGB/2005/21

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2009/006

UNDT/2009/009

UNDT/2009/056

UNDT/2009/061

UNDT/2009/062

UNDT/2010/003

UNDT/2010/029

UNDT/2010/038

UNDT/2010/047

UNDT/2010/048

UNDT/2010/203

UNDT/2010/134

UNDT/2009/045

UNDT/2009/047

UNDT/2009/048

UNDT/2010/065

UNDT/2010/095

UNDT/2010/113

UNDT/2010/040

UNDT/2010/071

UNDT/2010/120

UNDT/2010/086

UNDT/2010/195

UNDT/2009/084

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