

UNDT/2011/131, Applicant

UNAT Held or UNDT Pronouncements

There may be cases that take longer to be heard by the UNDT and that this may provide a reason justifying compensation beyond the two-year limit. This was such a case. Compensation in lieu of rescission was set at two years and 2 months' net-base salary. The Applicant's claim for compensation was excessive. It equated to over 13 years of net-base salary plus payment of a number of entitlements. Apart from being well outside the scope of compensation that might properly be ordered by the Tribunal, the Applicant's claim was predicated on the mistaken belief that but for the unlawful dismissal he would have remained in his position until his retirement some 10 years into the future. That prediction was unsubstantiated by the Applicant. The Applicant's claim for future losses was rejected. The breaches of natural justice and the effects of these breaches on the Applicant were evident. These cumulative effects warranted an award of compensation for moral damages even though that award meant that the total amount of compensation would exceed the 2 year limit for compensation set by Article 10(5). They were sufficiently serious to be regarded as an exceptional case. Compensation for moral damages was set at 3 months' net base salary.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him for serious misconduct.

Legal Principle(s)

The very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. Article 10(5) of the UNDT Statute limits the total of all compensation under sub paragraphs (a) and (b) to the equivalent of two years' base salary except

in exceptional cases. The tenor of Article 10(5) of the statute is that compensation should be calculated in terms of the net base salary. It does not specifically refer to entitlements over and above the salary.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Compensation in lieu of rescission is set at two years and 2 months net-base salary. Compensation for moral damages is set at 3 months net-base salary.

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNHCR

Case Number(s)

UNDT/NBI/2009/061

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

20 Jul 2011

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Maximum amount / exceptional circumstances

Non-pecuniary (moral) damages

Remedies

Rescission

Applicable Law

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

UNDT/2011/054

2012-UNAT-209

UNDT/2011/131