

# UNDT/2011/199, Mistral Al-Kidwa

## UNAT Held or UNDT Pronouncements

Abolished posts: The onus is on the Respondent to show that the Organization acted correctly towards the Applicant as a permanent appointee on an abolished post and to demonstrate what good faith steps it took, in accordance with its legal and policy obligations, to assist her with finding alternative employment. Manifest abuse of process: A withdrawal of an admission of liability upon which the parties have relied may result in a finding of manifest abuse of process warranting award of costs. Outcome: Relied ordered: (i) 9 months' net base salary (breach of rights and loss of chance of continued employment); (ii) 3 months' net base salary (emotional distress); (iii) USD1,500 (costs against the Respondent).

## Decision Contested or Judgment/Order Appealed

The Applicant, who held a permanent appointment with UNICEF, appealed against the decision to separate her from service. The UNDT found that the decision to end the Applicant's assignment and, as a result, to separate her from service was lawful. However, the UNDT found that UNICEF failed to comply with its obligations to the Applicant as a permanent staff member on an abolished post. The UNDT found that it was unable to make a definite finding that the Applicant would have been offered a new contract had UNICEF complied with its obligations. However, it found that the likelihood that she would have received a new contract was sufficiently high to award the amount of nine months' net base salary as compensation for the loss of chance of continuing her employment and loss of career opportunities. The UNDT further found that the Applicant suffered emotional distress, for which she should be compensated in the amount of three months' net base salary. The UNDT further found that the Respondent manifestly abused the proceedings by withdrawing the admission of liability, which had been relied upon by both parties, and awarded costs against the Respondent in the amount of USD1,500.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Mistral Al-Kidwa

Entity

UNICEF

Case Number(s)

UNDT/NY/2010/053/UNAT/1706

Tribunal

UNDT

Registry

New York

Date of Judgement

22 Nov 2011

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Abuse of process before UNDT/UNAT

Costs

Appointment (type)

Permanent appointment

Termination (of appointment)

Applicable Law

Staff Regulations

- Regulation 9.1

Staff Rules

- Rule 109.1(c)

UNDT Statute

- Article 10.6

Related Judgments and Orders

UNDT/2009/028

UNDT/2010/147

2010-UNAT-035

2010-UNAT-044

2010-UNAT-052

2011-UNAT-129