

UNDT/2012/121, Rockcliffe

UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant's service should be deemed uninterrupted and continuous on a 100 series fixed-term contract. The UNDT found that the Applicant did not suffer any loss with respect to the delay of her family leave, but that she should be awarded USD1,200 as compensation for not receiving her home leave entitlement in December 2009. The UNDT rejected the Applicant's claims of emotional distress as unproven. The UNDT also found that the Applicant satisfied the eligibility criteria for consideration for conversion to a permanent appointment and should have been considered for it. The UNDT ordered that the Applicant be paid: (i) 7.5 days of salary at the GS-7 level, step X; (ii) 4.5 days of salary at the FS-6 level, step X; (iii) 9 days of mission subsistence allowance; and (vi) USD1,200 for the delayed home leave entitlements. The UNDT also ordered that the Applicant be given full and fair consideration for conversion to a permanent appointment.

Decision Contested or Judgment/Order Appealed

This judgment dealt with relief to be ordered following Rockcliffe UNDT/2012/033, in which the UNDT found that the decisions to subject the Applicant to a retroactive break in service and to place her on an appointment of limited duration as opposed to a fixed-term appointment were unlawful. The parties reached a partial settlement of the Applicant's claims, with two issues remaining: (i) the Applicant's request that the Organization consider her for conversion to a permanent appointment, and (ii) her claim for compensation in connection with the delayed leave entitlements.

Legal Principle(s)

Compensation, generally: Not every violation will necessarily lead to an award of compensation; compensation may only be awarded if it has been established that the staff member actually suffered damages (cf Antaki 2010-UNAT-095). Alternative

compensation under art. 10.5(a) of the UNDT Statute: Article 10.5(a) of the Tribunal's Statute requires the Tribunal, in cases where the contested administrative decision "concerns appointment, promotion and termination", to set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested decision or specific performance. In the Tribunal's considered view, art. 10.5(a) should not be interpreted too broadly as if it was meant to cover all decisions somehow related to appointment, promotion, and termination matters. The Tribunal finds that the clause should be interpreted as applying primarily to decisions not to appoint or promote a staff member or to terminate her or his appointment. The likely rationale for including this clause in the Statute is, inter alia, to avoid affecting third-party rights and to avoid imposing reinstatement or continued employment where the relationship between the parties has irretrievably broken down.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial comp. & specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Rockcliffe

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/142

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Aug 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Benefits and entitlements

Compensation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2009/10

Staff Rules

- Rule 104.12(b)(iii)
- Rule 104.13

UNDT Statute

- Article 10.5