

UNDT/2012/126, Goodwin

UNAT Held or UNDT Pronouncements

For the Applicant to claim pecuniary damages arising from his being transferred, or the reprimand being withdrawn whilst he was subjected to the JDC process, he must establish that he suffered actual economic harm. The Applicant could, for instance, have done so by identifying a specific promotion which he missed out on. The Tribunal finds that the Applicant has provided limited evidence of his exclusion from consideration for other posts. The Tribunal finds that being investigated for misconduct and having been issued with an administrative reprimand is more than likely to have negatively impacted the Applicant's general reputation and wellbeing. However, the fact that the Applicant acknowledged and was found responsible for some lack of managerial oversight is a factor which must be taken into account in the assessment of compensation. However, the Tribunal is convinced from the submissions of the Applicant and in light of all the circumstances of the case, including the inappropriate content of the initial reprimand and the protracted period of time which it took to resolve the matter, that the Respondent's breaches did attach some "stigma" to the Applicant which negatively affected his general reputation and wellbeing, and therefore also his career and life in the broader sense. The Tribunal considers that this damage went beyond that which would have been caused had an appropriate reprimand been issued within a reasonable period of time, and the Applicant should be compensated for this. Considering the Applicant's circumstances, including his career path and the many years he has been in service, the Tribunal recognises that the breaches committed by the Respondent have had a negative impact on his general reputation and wellbeing. In dealing with the Applicant, the Respondent breached the rule against double jeopardy (see para. 37 in UNDT/2011/104 on liability), and subjected the Applicant to a disguised disciplinary measure. In cases where disciplinary measures have been found to be disproportionate or unlawful, the Tribunal has awarded damages at a high scale. The Tribunal finds that it is reasonable to conclude that all this has caused the Applicant harm, including in respect of the delays in resolving the matter. The Tribunal, having taken all of the above factors into consideration, assesses the appropriate award of

compensation for harm to his reputation, exacerbated by delay and due process violations, to be USD30,000. The Tribunal considers that an award for costs is not appropriate in these circumstances. The Tribunal is limited to awarding costs in narrow circumstances as defined by art. 10.6 of its Statute. The Tribunal must determine that a party has “manifestly abused the proceedings before it”. Neither the statutory provision nor the jurisprudence as relied upon by the Applicant supports an award for “an abuse of process” for conduct prior to the proceedings before the Tribunal. The Tribunal does not consider the Respondent to have manifestly abused the proceedings before it and therefore an award under this heading will not be made.

Decision Contested or Judgment/Order Appealed

To impose, remove and again reinstate an administrative reprimand issued to the Applicant upon the recommendation of the Joint Disciplinary Committee (“JDC”), following its review of allegations of misconduct made against him.

Legal Principle(s)

The fundamental purpose of compensation is to place an aggrieved party in the position he or she would have been in but for the breach in contractual obligations:. The Dispute Tribunal may award compensation “for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury”. Such compensation may only be awarded if the harm has actually been established. Pursuant to art. 10.7 of the Statute of the Dispute Tribunal, the Tribunal may not award exemplary or punitive damages, and, in fact, a compensation award may not include such damages.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Goodwin

Entity

UNMIS

Case Number(s)

UNDT/NY/2009/120

Tribunal

UNDT

Registry

New York

Date of Judgement

17 Aug 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Applicable Law

UNDT Statute

- Article 10.6
- Article 10.7