

UNDT/2012/163, Simmons

UNAT Held or UNDT Pronouncements

The Tribunal ordered the Respondent to pay to the Applicant the sum of USD10,000 for the anxiety and distress she suffered as a result of the Respondent's failure to give full effect to sec. 15.3 in ST/AI/2002/3 which requires "maximum dispatch" in the completion of the rebuttal process.

Decision Contested or Judgment/Order Appealed

The Applicant challenged what she regarded as undue, inordinate and unreasonable delay on the part of the Respondent in considering her request for rebuttal of her performance appraisal.

Legal Principle(s)

Timeliness of e-PAS rebuttal process. Absent truly exceptional circumstances, a period of two years to complete the Applicant's rebuttal process cannot be deemed to satisfy the requirement of "maximum dispatch" of a rebuttal process pursuant to sec. 15.3 of ST/AI/2002/3. Evidence of non-pecuniary losses. The Tribunal is not prepared to lay down a principle of law that before a staff member is entitled to claim damages for anxiety and stress there must necessarily and always be a medical report. The key question for the Tribunal to consider is whether or not it has, in a particular case, sufficient evidence and/or other information to enable it to make a factual finding that an applicant did, in fact, suffer from stress and anxiety. In the absence of any such evidence and/or other information, the Tribunal is clearly precluded from providing any such award. Calculating non-pecuniary losses. It is more appropriate to quantify non-pecuniary damages as a lump-sum rather than by expressing it in terms of the staff member's net-base salary. Compensation under this head should not be based on the injured party's professional category of employment and level, but on the actual harm caused to her/him by the unlawful

act. Adopting this principle assists in the establishment of a degree of consistency in benchmarking such awards.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Simmons

Entity

OPPBA

Case Number(s)

UNDT/NY/2010/077

Tribunal

UNDT

Registry

New York

Date of Judgement

2 Nov 2012

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Compensation

Non-pecuniary (moral) damages

Performance management

Rebuttal

Applicable Law

Administrative Instructions

- ST/AI/2002/3

Related Judgments and Orders

UNDT/2011/084

2012-UNAT-221

2010-UNAT-094

2010-UNAT-095

2012-UNAT-228

2012-UNAT-234

2010-UNAT-059