

UNDT/2012/187, Zhouk

UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant's contract was not terminated but, instead, it was not renewed after its date of expiration. As termination indemnity was payable to staff members upon termination of their appointment and not in cases of non-renewal, the Applicant was not entitled to such payment. With respect to the interest on reimbursement for unused annual leave days, the UNDT found that, while that reimbursement amount was held by the Organization pending completion of the Applicant's separation paperwork, it accrued interest which is payable to the Applicant. With respect to the payment in lieu of notice, the UNDT found that the Respondent undertook to pay to the Applicant three months' salary in lieu of notice in recognition of the Applicant's many years of service. The UNDT found that, instead of paying to the Applicant three months' salary in lieu of notice, the Organization placed him on special leave with full pay. The UNDT found that it would be improper to equate salary paid while on special leave with full pay with the promised payment in lieu of notice. Further, the Tribunal found that the amounts due to the Applicant shall be subject to interest. Prior to 13 September 2011, the interest was at the applicable US Prime Rate. Starting 13 September 2011, when no separation-related paperwork was outstanding from the Applicant and the amounts should have been paid in full in Pakistani dollars, the interest was at the applicable interest rate as established by the State Bank of Pakistan. There is no evidence before the Tribunal that would suggest that the appraisal of the Applicant's qualifications can be called into question or that any of the applicable procedures, including that of the CRB, were not respected. Furthermore, there is nothing before the Tribunal that could be made available to the Tribunal via the production of additional documents that would indicate that the Secretary-General exceeded his discretion when determining the suitability of the Applicant. The Administration provided the Applicant with a reason for its decision and the Applicant has failed to provide the Tribunal with any evidence that the selection decision was either improperly motivated or unlawful. Furthermore, nothing in the relevant documents that were produced during the proceedings bring into question the lawfulness of the decision or the reason provided for it.

Decision Contested or Judgment/Order Appealed

The Applicant's non-selection for a post.

Legal Principle(s)

The Secretary-General has broad discretion with regard to determining the suitability of candidates in matters of post selection and it is not the role of the Tribunal to substitute its own views for that of the Secretary-General. The UNDT found that the Applicant's contract was not terminated but, instead, it was not renewed after its date of expiration. As termination indemnity was payable to staff members upon termination of their appointment and not in cases of non-renewal, the Applicant was not entitled to such payment. With respect to the interest on reimbursement for unused annual leave days, the UNDT found that, while that reimbursement amount was held by the Organization pending completion of the Applicant's separation paperwork, it accrued interest which is payable to the Applicant. With respect to the payment in lieu of notice, the UNDT found that the Respondent undertook to pay to the Applicant three months' salary in lieu of notice in recognition of the Applicant's many years of service. The UNDT found that, instead of paying to the Applicant three months' salary in lieu of notice, the Organization placed him on special leave with full pay. The UNDT found that it would be improper to equate salary paid while on special leave with full pay with the promised payment in lieu of notice. Further, the Tribunal found that the amounts due to the Applicant shall be subject to interest. Prior to 13 September 2011, the interest was at the applicable US Prime Rate. Starting 13 September 2011, when no separation-related paperwork was outstanding from the Applicant and the amounts should have been paid in full

in Pakistani dollars, the interest was at the applicable interest rate as established by the State Bank of Pakistan.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Zhouk

Entity

OCHA

Case Number(s)

UNDT/NY/2010/083

Tribunal

UNDT

Registry

New York

Date of Judgement

30 Nov 2012

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2006/3

UNDT Statute

- Article 8

Related Judgments and Orders

2011-UNAT-110

UNDT/2010/065

2011-UNAT-122

2012-UNAT-242

UNDT/2011/171

2012-UNAT-201