

UNDT/2015/053, Dahan

UNAT Held or UNDT Pronouncements

Home leave: The Tribunal concluded that there is nothing in staff rule 5.2 which indicates that the extension or the duration of the extension of a contract of employment is to be decided along with the sick leave entitlements of a staff member. Extension and sick leave cannot be merged to motivate a decision on whether to extend a contract or not. The entitlement to home leave is premised on 12 months service at a designated duty station with the sole condition that the service of the staff member is expected to continue at least three months after the staff member returns to the duty station. Moral damages: The Tribunal was of the view that evidence establishing the existence of moral injury can be gathered and/or inferred from the pleadings and documents produced by a party and does not necessarily have to be viva voce evidence. Application of the amendment to art. 10.5(b): The amendment to art. 10.5(b) requires evidence of “harm” before compensation is granted. The Tribunal considered that it would be unfair to apply the amendment retroactively to the case of the Applicant as indeed to all cases filed before December 2014. The Tribunal held however that even without that amendment the established jurisprudence of UNAT indicates that evidence of prejudice is required before an award of moral damages is made.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision by the International Criminal Tribunal for Rwanda (ICTR) to not grant her unconditional home leave in 2012. The Tribunal concluded that the Respondent exercised his discretion wrongly and unlawfully deprived the Applicant of her home leave in 2012.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal granted the Applicant moral damages in the amount equivalent to three months' net base salary and ordered the Respondent to either grant the Applicant's request for home leave or pay the equivalent of her home leave entitlement.

Full judgment

[Full judgment](#)

Applicants/Appellants

Dahan

Entity

ICTR

Case Number(s)

UNDT/NBI/2013/035

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

19 Jun 2015

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Home leave

Sick leave

Compensation

Non-pecuniary (moral) damages

Applicable Law

Administrative Instructions

- ST/AI/2005/3

GA Resolutions

- A/RES/69/203

Staff Rules

- Rule 5.2
- Rule 6.2

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)

Related Judgments and Orders

UNDT/2010/026

2010-UNAT-042

2010-UNAT-084

2012-UNAT-205

2012-UNAT-228

2013-UNAT-387

2014-UNAT-396

2014-UNAT-429

2014-UNAT-430

2014-UNAT-433-Corr.1

2014-UNAT-469

2014-UNAT-483

2015-UNAT-501