

UNDT/2016/027, Kallon

UNAT Held or UNDT Pronouncements

The Tribunal rescinded the contested decisions and awarded USD50,000 in non-pecuniary damages.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2015/126 (the judgment on liability), the Tribunal found that two decisions affecting the Applicant's delegated authority to perform significant functions in the management of financial, human and physical resources were flawed. In his submissions on remedy, the Applicant requested rescission of the decisions, specific performance (reinstatement of designation and placement in his former post), as well as pecuniary and non-pecuniary damages. The Tribunal, in this judgment, dismissed a motion for interim measures pending proceedings, filed in the second of these two cases, which had requested the suspension of a selection process in order to preserve the opportunity for the Tribunal to order specific performance.

Legal Principle(s)

On rescission and specific performance relating to designation: As discussed in the judgment on liability, designation is a form of delegated authority. In accordance with sec. 2.2 of ST/AI/2004/1 (Delegation of authority under the Financial Regulations and Rules of the United Nations), the official delegating authority is accountable for the manner in which the authority is exercised. In the circumstances of these cases, and based on the evidence placed before it, the Tribunal considers that rescission of the contested decisions, rather than the specific performance requested by the Applicant, is an appropriate remedy. The Tribunal finds that the restoration of the status quo ante is impossible because, by an order for specific performance, the Tribunal would indirectly be conferring designation whilst not being accountable for the manner in which it is exercised. On pecuniary damages: There was no guarantee that the Applicant would have been renewed beyond the initial one-year appointment offered by UNISFA or, if he had remained at MINUSTAH, that his fixed-term appointment would have been extended beyond 30 June 2013. Both this Tribunal and the Appeals Tribunal have expressed reluctance to speculate too far into the future when considering compensation given the normal contingencies and uncertainties that can and frequently do intervene in the average working life (see, for example, Fayek UNDT/2010/113 at para. 30 (not appealed); Mwamsaku 2012-UNAT-246 and Mushema 2012-UNAT-247 at para. 24 of both judgments). On quantifying non-pecuniary damages as a lump sum. As a matter of principle, it is the Tribunal's view that an award for non-pecuniary damages should be expressed as a lump sum rather than in terms of net base salary. The Tribunal is assessing the degree of injury suffered by the individual and quantifying the award accordingly. This exercise is not related to the status or seniority of the individual within the Organization and an award should therefore not be related to the individual's earning or status, but to the actual distress and moral damage suffered by the individual. Each case is to be assessed on its own facts, including the manner in which the individual has been treated and the impact of the treatment on that specific individual.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial comp. and specific performance.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kallon
Entity
MINUSTAH
Case Number(s)
UNDT/NY/2013/18
Tribunal
UNDT
Registry
New York
Date of Judgement
1 Apr 2016
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Evidence of harm
Non-pecuniary (moral) damages
Pecuniary (material) damages
Performance management
Applicable Law
Administrative Instructions

- ST/AI/2004/1

Secretary-General's bulletins
Staff Regulations

- Regulation 4.5

Staff Rules

- Rule 4.13(c)

UNDT RoP

- Article 14.1

UNDT Statute

- Article 10.2

Related Judgments and Orders

UNDT/2010/113
2012-UNAT-246
UNDT/2012/178
2015-UNAT-528
2011-UNAT-151
2011-UNAT-141
2014-UNAT-412
2010-UNAT-059

2015-UNAT-590
2010-UNAT-095
2015-UNAT-587
2015-UNAT-501
2010-UNAT-092
2013-UNAT-379
2014-UNAT-397
2015-UNAT-516
UNDT/2015/112
2013-UNAT-347
2013-UNAT-346
2013-UNAT-370