

UNDT/2016/084, Mohammed

UNAT Held or UNDT Pronouncements

Abolition of post: The Tribunal concluded that the Administration was not fair, just, or transparent in its dealings with the Applicant over the discontinuation of his position. The procedure adopted for the discontinuance of the Applicant's position was not in accordance with the relevant rules, regulation and procedures. The Administration failed to comply with the Guidelines concerning the timing of the written notification of the proposal to the Applicant, discussions with the manager and submission of the proposal to the Budget Committee. The failure to immediately notify him of the decision of the Budget Committee also reduced the mandatory six months for implementation to three months.

Adequacy of reasons: The Tribunal concluded that the decision to discontinue the Applicant's post was a matter of policy which is in the sole discretion of the Organization. There is no evidence to rebut the presumption that these reasons were other than genuine or that they were not a proper exercise of the managerial discretion to restructure a department or unit.

Improper motives: The Tribunal noted that the Applicant relied on the series of undoubted deficiencies in the procedure which led to the discontinuance of his position as evidence of extraneous factors. These included the undue haste in notifying him of the proposal and submitting it to the Budgetary Committee combined with the failure to convey the decision of the Committee until months after the decision followed by the speedy implementation of his separation points. The Tribunal found that such lapses in proper process may equally be explained by carelessness and oversight and, although reprehensible and did not of themselves provide clear and convincing evidence of ill motivation or discrimination.

Compensation: The Tribunal concluded that the payment of the three months' salary and benefits to the Applicant was not expressed to be in full and final settlement of the litigation between the parties which was on foot at that time, nor did the Applicant agree to the conclusion of the litigation when he received the payment. The Tribunal noted that compensation would normally be the entitlements to which the Applicant would have been due up to the end of his fixed-term appointment. Beyond that point the Applicant had no expectation of renewal. The Tribunal found

however that this amount had already been paid to the Applicant in light of the three months' salary and benefits he had received. The Respondent was ordered to pay USD3,000 as moral damages for the unwarranted stress suffered by the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant challenged UNHCR's decision to abolish his post. The Tribunal concluded that the contested administrative decision was unlawful and ordered that it be rescinded.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohammed

Entity

UNHCR

Case Number(s)

UNDT/NBI/2015/053

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Jun 2016

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Compensation

Separation from service

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNHCR IOM/019/2012-FOM/020/2012
- UNHCR IOM/027/2009-FOM/027/2009

Related Judgments and Orders

UNDT/2012/118

2013-UNAT-281
2013-UNAT-339
2014-UNAT-433
2015-UNAT-503