

# **UNDT/2016/100, Massi**

## **UNAT Held or UNDT Pronouncements**

The Tribunal found that the Organization failed to fulfil its obligations by not making timely payments to the Applicant under art. 11.2(d) of Appendix D for the two periods concerned, and that the amounts paid to the Applicant did not compensate him for the delay in payment as they should have. The Tribunal awarded the Applicant material damages in the amount of USD29,261.86 plus CHF10,544.50, and compensation for any additional taxes due by the Applicant, upon presentation of his tax declarations to the Respondent, resulting from the receipt of a lump sum of USD72,266.46 in 2015, instead of being paid by monthly instalments from May 2005 until April 2012. It also awarded moral damages in the amount of USD9,000. The Tribunal rejected the Applicant's request for referral for accountability. Receivability *ratione materiae*: Although the decision to pay retroactive compensation to the Applicant provided him partial satisfaction, the determination of the amount to be paid retroactively is an administrative decision that can be challenged before the Tribunal. The Administration's failure to decide on the extension of compensation for loss of earning capacity almost three years after it was due amounts to an administrative decision pursuant to Tabari 2010-UNAT-030. Review of compensation for loss of earning capacity under art. 11.2(d) of Appendix D: When compensation under art. 11.2(d) of Appendix D is awarded only for a specific period of time, it is incumbent upon the Organization to initiate a timely review of the staff member's entitlement, to avoid any discontinuation of payment. Once an initial decision has been made to grant compensation under art. 11.2(d), any delay in reviewing a staff member's case should not prejudice him unless it is attributable to him. A decision to extend compensation for loss of earning capacity under art. 11.2(d) of Appendix D is distinct from a decision by the United Nations Joint Staff Pension Fund to award and review disability benefits under its Regulations and Rules, although the two may be interconnected. Recovery of overpayment: When recovering an overpayment through deductions from entitlements due to a staff member, the Organization has a duty to follow-up on the balance of account, and to keep the concerned staff member regularly informed about outstanding monies still due. Compensation for

delayed payment of entitlements: When the Organization makes a mistake in the calculation of the entitlements due to a staff member, which results in a delayed payment, it is liable to pay compensation for the financial loss incurred by the staff member as a result of the delay. The very purpose of compensation is to place the Applicant in the same position he would have been in, had the Organization complied with its contractual obligations (Warren 2010-UNAT-059; Iannelli 2010-UNAT-093). For a delayed payment of entitlements that ought to be paid monthly, the financial loss includes a loss of interests, a loss resulting from the fluctuations in the exchange rate between the currency in which the entitlements are paid and the currency of the country where the staff member resides, and tax implications resulting from the receipt of a lump sum in a fiscal year instead of monthly instalments over a number of years. Moral damages: Pursuant to art. 10.5(b) of its Statute, the Tribunal may award compensation for moral injury if it is sufficiently substantiated by evidence. However, it is not compulsory to submit viva voce evidence of harm; such fact can be gathered and/or inferred from the pleadings and documents produced by a party (Dahan UNDT/2015/053).

## Decision Contested or Judgment/Order Appealed

The Applicant challenged the final settlement of the compensation due to him until 30 April 2012 for loss of earning capacity under art. 11.2(d) of Appendix D to the Staff Rules ("Appendix D"), and the discontinuation of such compensation after 30 April 2012. The Organization, who was recovering an overpayment made to the Applicant through deductions from the monthly compensation due to him for loss of earning capacity, discovered in May 2015 that the overpayment had been fully recovered since 13 May 2005. On 15 June 2015, it paid the Applicant an amount of USD72,226.46 as compensation for his loss of earning capacity from 14 May 2005 to 30 April 2012. On 29 October 2015, the Applicant's compensation for loss of earning capacity was extended from 1 May 2012 until his normal retirement age and, in December 2015, the Applicant was paid an amount of USD42,310.67 as compensation for his loss of earning capacity from 1 May 2012 to 31 December 2015.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Only financial compensation awarded.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Massi

## Entity

UNOG

## Case Number(s)

UNDT/GVA/2015/150

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

19 Jul 2016

## Duty Judge

Judge Downing

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Compensation

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

## Applicable Law

Staff Rules

- Appendix D
- Rule 11.1(c)
- Rule 11.2(c)
- Rule 11.2(d)
- Rule 11.3
- Rule 14
- Rule 4

UNDT Statute

- Article 10.5

UNRWA DT Statute

- Article 10.8

UNAT Statute

- Article 2.1(a)

## UNJSPF Regulations

- Article 33

## Related Judgments and Orders

UNDT/2015/053

2010-UNAT-030

2010-UNAT-059

2010-UNAT-093

2013-UNAT-309