

UNDT/2017/092, Langué

UNAT Held or UNDT Pronouncements

The Tribunal was not persuaded by the Applicant's argument that staff rule 9.2(b) should apply to her case because her resignation was not genuine and the Administration had set her up for resignation. Rather, it was apparent to the Tribunal that the Applicant's resignation was situational and a consequence of a combination of earlier decisions taken by the Applicant and the external factors. The Applicant overestimated the power of her newly acquired diploma on the job market which proved more difficult than she had expected. The Applicant made no inquiries concerning termination indemnity before tendering her resignation. The Tribunal saw no grounds to construe a legal obligation on the part of the administration to offer termination as a mode of separation from service as an alternative to resignation when faced with a firm resolution of the staff member to take up another employment, so that the staff member could both take up the employment and have termination indemnity available to him or her. The delay from May 2015 till 16 September 2015 was undue and clearly was not attributable to the Applicant rather was it the fault of the Administration due to human oversight. The UNICEF Administration failed to fulfil its obligation to make a timely payment of the Applicant by making the payment of relocation grant four months after it should have been effected had normal workflows been respected, all despite the various followups sent by the Applicant. While the Applicant claimed, in addition, that the Respondent's failure to make timely payments had entailed levying punitive interest on her education loan from UNFCU, she adduced no documents to demonstrate that any such interest had been charged, despite having been specifically requested to do so by the Tribunal. The Tribunal found that, although the matter at hand arises from a contractual setting, i.e., payment of entitlements, the breach of the Applicant's right to timely payment was attended by peculiar features, rendering it capable of causing moral injury. The circumstances in relation to the Administration's conduct after 11 May 2015 demonstrated a pattern of neglect and a breach of contractual rights of a fundamental nature, and were such that normally cause distress exceeding the level of vexation and amounting to frustration,

helplessness and indignity. This for the Applicant was compounded by anguish and uncertainty related to the financial aspects. Her correspondence with the Respondent reveals anxiety and indignation at the treatment that she considered unfair. It also reveals that her trust in the Organization was undermined to the point that she suspected that the Administration's reluctance to effect her payments was a form of harassment in retaliation for her earlier a complaint of abuse of office which she had made in 2013. The Tribunal awarded USD1,500 as compensation for the Applicant's moral injury.

Decision Contested or Judgment/Order Appealed

The Applicant contested the amount of separation entitlements she received following her resignation from the Organization.

Legal Principle(s)

Under the United Nations Staff Regulations and Rules, termination indemnity may only be paid to staff members whose contracts have been terminated, not staff who resigned. Under the Staff Regulations and Rules, termination indemnity cannot be paid in the case of resignation by way of "deserved recognition" for lengthy service. Concerning the issue whether the matter of termination indemnity could be subject to negotiations, a claim for such a payment outside the applicable rules where explicit written commitment to that effect had been made by the administration was endorsed by UNAT. The Tribunal notes the existence of a general principle of due diligence and good faith towards staff members enshrined in the United Nations Charter. Specifically, as many times stressed by the Tribunal, the primary responsibility for effecting timely and accurate payment of entitlements due to staff members rests with the United Nations Administration. In dealing with a bureaucracy that is presumed professional and whose acts are to be presumed regular, it is not to be required of a staff member to be constantly monitoring, following-up, reminding, verifying and nagging. Proving moral injury requires showing beyond a balance of probabilities the existence of factors causing harm to the victim's personality rights or dignity. Among other, the loss of a positive state of emotional gratification or emotional balance is harm deserving of compensation. For a breach or infringement to give rise to moral damages, especially in a contractual setting, where normally a pecuniary satisfaction for a patrimonial injury is regarded as

sufficient to compensate a complainant for actual loss as well as the vexation or inconvenience caused by the breach, then, either the contract or the infringing conduct must be attended by peculiar features, or must occur in a context of peculiar circumstances. Once the staff member has chosen the lump sum as the form of exercising the entitlement to unaccompanied shipment, the claim and its equivalent obligation on the part of the administration are transformed into a purely monetary one. As such, the right to compensation for the administration's failure to effect a timely payment turns on the showing of a financial and moral damage. The presence of certain circumstances may lead to the presumption of moral injury - *res ipsa loquitur*. Circumstances of a certain case may permit the application of the evidentiary presumption that such damages will normally follow as a consequence to an average person being placed in the same situation of the applicant. Two types of situations give rise to a claim for compensation for moral injury: first, breach of a fundamental nature, whereupon occurrence of moral injury in the form of harm to dignitas is presumed, and second, where the nature of the breach is not automatically leading to a moral injury, or the injury is of such dimension or nature that would usually need to be proven through evidence of particular stress or anxiety.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Secretary-General filed an appeal to UNAT on 12 February 2018. The appeal was upheld and Judgment No. UNDT/2017/092 was vacated as regards the award of compensation for moral harm.

Full judgment

[Full judgment](#)

Applicants/Appellants

Langue

Entity

UNICEF

Case Number(s)

UNDT/NBI/2016/019

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

13 Dec 2017

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Compensation

Non-pecuniary (moral) damages

Applicable Law

Staff Rules

- Rule 13.1(a)
- Rule 9.2(b)

Related Judgments and Orders

2018-UNAT-858