

# UNDT/2018/078, Omwanda

## UNAT Held or UNDT Pronouncements

The Tribunal finds that since the Applicant's EOD into the United Nations common system is 10 October 2005, the Administration used the incorrect EOD date for the calculation of the termination indemnity due to the Applicant. Therefore, the contested decision is unlawful and stands to be rescinded. The Tribunal finds that the Applicant has placed no evidence whatsoever, illustrating any discriminatory treatment against him. On the contrary, the record indicates that the Respondent took measures to ensure that the Applicant did not suffer hardship following his separation from service by issuing him a salary advance in the amount of USD2,377.21 in or around March 2016. The Administration has not only failed to comply with its legal framework but has persisted in arguing this matter in a protracted manner having admitted in Couquet, that an applicant's full period of service has to be taken into account in the computation of his termination indemnity, but arguing to the contrary in the present case. Indeed, in the aforesaid summary Judgment No. UNDT/2016/098, the Tribunal observed that it would be regrettable if the matter ended up in costly prolonged litigation considering all its particular circumstances, the nature of the claim, the sums involved, the exchanges generated between the Applicant and the Administration, and the attendant costs of potential litigation to both parties and the Tribunal, impressing upon the parties to amicably resolve the matter to no avail. Having taken into account the nature of the irregularity and the length of delay in administering the proper termination indemnity due to the Applicant, the Tribunal finds that a fair and equitable compensation would be the sum of USD5,000.

## Decision Contested or Judgment/Order Appealed

The Administration's decision not to pay the Applicant termination indemnity following an award of disability. The termination of his appointment on medical grounds. The decision to change his entry on duty ("EOD") date.

## Legal Principle(s)

Staff rule 9.8(b) of ST/SGB/2014/1 states that length of service for purposes of calculating termination indemnity shall be deemed to comprise the total period of a staff member's full-time continuous service on fixed-term or continuing appointments. That periods of former service are relevant in termination indemnity cases was submitted (and thus admitted) by the Respondent in the matter of Couquet 2015-UNAT-574, para. 35. Annex III(b) to the Staff Regulations and Rules explicitly provides for a reduction of the amount of indemnity payable under Annex III(a) by an amount equal to the disability benefit that a staff member will receive under the Regulations and Rules of the UNJSPF, for the number of months to which the termination indemnity rate corresponds. The onus is on the Applicant to prove a claim of discrimination on the preponderance of the evidence. Compensation may be awarded for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury. Compensation must be set by the Dispute Tribunal following a principled approach and on a case by case basis, and the Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case. It is clearly the responsibility of the Administration to promulgate clear rules, regulations and policies, and to ensure that its human resource personnel correctly apply the applicable legal framework. If staff members are deemed to know the applicable legal framework, then surely there is an equal, if not higher, duty of care implied on the Respondent.

## Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Omwanda

Entity

DSS

Case Number(s)

UNDT/NY/2016/040

UNDT/NY/2016/041

UNDT/NY/2016/066

Tribunal

UNDT

Registry

New York

Date of Judgement

30 Jul 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Compensation

Separation from service

Termination of appointment (see also, Termination of appointment)

Applicable Law

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 104.3
- Rule 9.8

UN Charter

Related Judgments and Orders

2010-UNAT-012

2010-UNAT-081

2013-UNAT-284

2015-UNAT-506

2015-UNAT-587