

UNDT/2018/084, Aylara

UNAT Held or UNDT Pronouncements

It was not disputed that the procedural flaws identified by Judgment Rodriguez-Viquez UNDT/2016/030 in respect of the Second Round of the 2013 Promotions Session for candidates for promotion to the P-5 level also vitiated the consideration of candidates to the D-1 level and thus impacted on the Applicant's chances to be promoted. The Tribunal noted that it was difficult to ascertain the chances that the Applicant had to be promoted but it was uncontested that they were significant. The Tribunal thus rescinded the contested decision. The Tribunal referred to Rodriguez-Viquez whereby the Applicant was awarded CHF6,000 as compensation in lieu of rescission. Having reviewed the arguments presented by the parties, the Tribunal saw no cogent reason to depart from the approach adopted in Rodriguez-Viquez, nor to set a different amount of compensation in lieu in the present case, which involved similar circumstances. The Tribunal noted that given the numerous and fundamental errors committed in the Second Round of review, the Applicant's progression to the Third Round did not entail that she had better chances of being promoted in the course of this comparative assessment. Also, akin to Mr. Rodriguez-Viquez, the Tribunal noted that the Applicant was eligible for promotion the following year, as the Promotions Policy was still in force at the time. Thus, the contested decision had an effect on her career prospects limited to one year. As to the Applicant's request to be awarded material damages equivalent to the difference of her salary at the P-5 level and the one she would have received at the D-1 level, the Tribunal found that the reasoning developed in Rodriguez-Viquez and other similar cases equally applied to the present case. If the Respondent elects not to rescind the contested decision, any loss of salary during the one-year period from the contested decision to the following promotions session will be compensated by the payment of the compensation in lieu. The Tribunal found, as it previously did in similar cases, that any possible loss of salary is too speculative to justify the award of material damages, considering that it is uncertain that the Applicant would have been granted a promotion. As to the Applicant's claim for moral damages, the Tribunal noted that she had provided no evidence of harm, as required by art. 10.5(b) of the

Tribunal's Statute. Thus, her claim in this respect was rejected.

Decision Contested or Judgment/Order Appealed

The decision not to promote the Applicant from the P-5 to the D-1 level during the 2013 UNHCR Promotions Session.

Legal Principle(s)

The Tribunal does not have the power to force the Organization to rescind a decision when it concerns a promotion and it must set an amount that the Organization may elect to pay in the alternative. Neither can the Tribunal grant a promotion itself, as this type of decision falls within the discretion of the Organization. In calculating the quantum of compensation, the Appeals Tribunal has stressed that the determination of the "compensation in lieu" must be done on a case-by-case basis and carries a certain degree of empiricism (Mwamsaku 2011-UNAT-265). In respect of decisions denying promotions, it has further held that "there is no set way for a trial court to set damages for loss of chance of promotion and that each case must turn on its facts" (Sprauten 2012-UNAT-219; Niedermayr 2015-UNAT-603).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Aylara

Entity

UNHCR

Case Number(s)

UNDT/GVA/2015/172

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Aug 2018

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Staff selection (non-selection/non-promotion)

Applicable Law

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

- UNHCR Promotions Policy

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2016/030

UNDT/2016/033

UNDT/2016/031

UNDT/2016/055

UNDT/2016/056

UNDT/2016/043

UNDT/2016/049

2012-UNAT-219

2015-UNAT-603