

UNDT/2020/053, Quatrini

UNAT Held or UNDT Pronouncements

Rescission of the contested non-renewal decision In its Judgment Quatrini UNDT/2020/043, the Tribunal found that the Organization failed to justify the non-renewal of the contract of the Applicant and that the decision to separate him from service was therefore flawed. The Tribunal further held, comparing the P-5 level position formerly encumbered by the Applicant with the one advertised in the Global Mechanism, that the two positions are essentially the same, the Tribunal thus drew the inference that the position still exists. In these circumstances, the Tribunal found that the most appropriate remedy is the rescission of the unlawful decision not to renew the Applicant's FTA and the reinstatement of the Applicant in the same position he encumbered (see for similar rescission in case of FTAs' non-renewal, Applicant UNDT/2020/16, Loose UNDT/2020/38, and Maslei UNDT/2015/41).

Determination of the compensation in lieu As the compensation is just a mandatory alternative for the Administration if it prefers not to rescind the challenged decision and it does not concern the economic loss suffered by a staff member, the Applicant does not have to demonstrate to have mitigated his loss. The determination of the compensation in lieu between the minimum and the maximum provided in its Statute must take into account—so graduating the amount accordingly— the specific circumstances of the case, and in particular the type and duration of the contract held by the staff member, the length of his/her service, and the issues at the base of the dispute... it seems reasonable—for instance—to grant the largest compensation in cases of termination of permanent appointments of senior staff members, and to limit the compensation in cases of non-renewal of FTAs for recently appointed staff members (where there is not a security of tenure, but only a chance of renewal). In the present case, having in mind the above-mentioned criteria and applying them to the specific case at hand (and so having considered the seniority of the Applicant, the type of contract held, and the chance of renewal of the contract in a position still required by the Administration), the Tribunal sets the amount of the compensation in lieu at six months' net-base salary at the P-5, step X level as per the salary scale in effect at the time of the Applicant's separation from service. Compensation for

harm Pecuniary damages The Tribunal considers that there is too much uncertainty as to whether the Applicant would have been offered an additional FTA after the first renewal. In particular, while the Applicant submits that the budget maintained a position at the P- 5 level throughout the entire period until 2021, the Tribunal finds that it would be too speculative under the Appeals Tribunal's jurisprudence to extend the compensable period any further than that two years as of the date of separation and at the P-5 level. The Tribunal notes that it could legitimately have been decided to not renew the Applicant's appointment for other legitimate grounds than budgetary reasons. Therefore, the basis for the calculation of loss of income should be limited to the period from 1 July 2018 to 31 December 2019, namely 18 months. The Applicant submits that he applied for more than 100 other jobs, but only succeeded in a part-time and short-term job along with some consultancies. The Tribunal is satisfied that the Applicant did make real and consistent efforts to mitigate his loss. Based on the documentation at hand and the parties' submissions, the Tribunal accepts the amounts presented by the Applicant, which have to be deducted from the amount of damages. Therefore, should the calculation of damages give a positive balance in favour of the Applicant, the Respondent is to pay the Applicant 18 months' net-base salary provided for the P-5 level position, minus USD132,833.

Non-pecuniary (moral) damages The Tribunal is aware that the Applicant has not been able to find steady employment since his separation from the Organization, although he had unsuccessfully applied for many jobs. The Tribunal, however, is unconvinced that the Applicant's lack of success in finding alternative employment can be attributed to the non-renewal decision as other prospective employers would not likely even be aware of this decision and its background. The Applicant, at least, has not proved this in any possible manner. The Applicant's claim for compensation for reputational damage is therefore rejected. The Tribunal finds that the documents provided by the Applicant are credible and does not doubt their veracity it can therefore rely on them as adequate means of evidence of the moral harm suffered by the Applicant. As for the compensation amount, the Tribunal finds that the Applicant's suffering was indeed relevant and that he did not contribute thereto himself. It has to be noted, however, that the moral harm has been proved by the Applicant only for a few months, namely up to September 2018. Considering the Appeals Tribunal's jurisprudence, the Tribunal awarded the Applicant USD10,000 in compensation for stress and anxiety (in comparison, see, for instance, the Appeals Tribunal's awards in Kallon (USD50,000) and Belkhabbaz UNAT-2018-873 (USD10,000)).

Decision Contested or Judgment/Order Appealed

The decision not to renew the Applicant's P-5 level fixed-term appointment.

Legal Principle(s)

General legal framework on remedies The remedies that the Dispute Tribunal may award, rescission with or without compensation in lieu and compensation for harm, are outlined in art. 10.5 of its Statute. Compensation in lieu is not compensatory damages based on economic loss, but only the amount the administration may decide to pay as an alternative to rescinding the challenged decision or execution of the ordered performance (see, for instance, Eissa 2014-UNAT-469). The amount of in lieu compensation will essentially depend on the circumstances of the case and "due deference shall be given to the trial judge in exercising his or her discretion in a reasonable way following a principled approach" (Ashour 2019UNAT-899).

Compensation for harm Compensation under art. 10.5(b) of the Dispute Tribunal's Statute may be awarded for (a) pecuniary damages, such as income loss, and (b) non-pecuniary damages, such as stress, anxiety, and reputational harm. Concerning pecuniary damages, the compensable period is typically the same as the last appointment (see, for instance, Gakumba 2013-UNAT-387, para. 16, Kasmani 2013UNAT-305, para. 36, and Belkhabbaz 2018-UNAT-895, para. 38). the staff member has to demonstrate to have done efforts to mitigate the economic loss arising from an administrative decision impacting on his employment (see also Zachariah 2017-UNAT764 and Fasanella 2017-UNAT-765). Regarding the Applicant's alleged reputational damage, art. 10.5(b) of the Tribunal's Statute requires that compensation for harm be subject to evidence. In this regard, it is, inter alia, necessary for an applicant to demonstrate a "nexus" between the "harm" and the "illegality" (see Kallon 2017-UNAT-742, para. 68, and Kebede 2018-UNAT-274, para. 20). The Appeals Tribunal, in Maslei 2016-UNAT-637, paras. 29-31, upheld the award of moral damages by the Tribunal, supported by evidence with reference to an unsworn medical report (with also a witness declaration given by the Applicant). The level of stress and anxiety depends on the person in question, and when assessing the evidence on record, a "common sense" approach must be applied whereby no "absolute requirement" exists "by way of a medical, psychological report or otherwise" (see Kallon, para. 70). Furthermore, "[m]uch will depend on the

circumstances of the situation at hand, as the existence of moral damages shall be assessed on a case-by-case basis” (see Kebede, para. 22).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Quatrini

Entity

UNCCD

Case Number(s)

UNDT/GVA/2018/048

Tribunal

UNDT

Registry

Geneva

Date of Judgement

14 Apr 2020

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Remedies

Applicable Law

Administrative Instructions

- ST/AI/1998/9

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2020/043

2014-UNAT-469

2017-UNAT-764

2019-UNAT-899

2013-UNAT-387

2018-UNAT-895

2017-UNAT-742

2017-UNAT-787

2013-UNAT-281

2016-UNAT-637