

# **2010-UNAT-033, Mebtouche**

## UNAT Held or UNDT Pronouncements

UNAT preliminarily rejected the Appellant's request for an oral hearing via teleconference, noting that his brief of appeal was sufficient and did not require further clarification. UNAT held that the Appellant's contention that UNDT failed to consider his arguments regarding the former service on a "specialist" post was without merit, noting that this issue was considered by UNDT. UNAT noted that neither UNDT nor UNAT has the authority to amend any regulation or rule of the Organisation, so as to apply the "case by case" consideration to "specialist" staff members during promotion sessions to all those who have served on an expert post for substantial part of their career. UNAT further noted that there were no deficiencies in the regulations or rules that would warrant a recommendation of reform or revision. With respect to the Appellant's contention that the compensation in lieu of rescission was too low, UNAT held that the compensation of 9,000 Swiss was inadequate having regard to the fact that the order was made on 16 October 2009, at a time when the Appellant had already retired and therefore had no possibility of any further promotion. UNAT accordingly allowed the appeal in part and set aside UNDT's order for payment of 9,000 Swiss francs in lieu of rescission of the contested decision and ordered that the Appellant be paid the equivalent of 3 months net base salary at the time of his retirement.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to promote him to the D-1 level. UNDT ordered rescission of this decision or, in lieu of rescission, payment of compensation in the amount of 9,000 Swiss Francs.

## Legal Principle(s)

Neither UNDT nor UNAT has the authority to amend any regulation or rule of an organisation. At best, UNAT may point out what it considers to be a deficiency in a regulation or rule and recommend a reform or revision.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mebtouche

## Entity

UNHCR

## Case Number(s)

2010-045

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

30 Mar 2010

## President Judge

Judge Adinyira

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

In-lieu compensation

Remedies

Compensation (see also, Compensation)

Rescission

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

## Related Judgments and Orders

UNDT/2009/039