

2010-UNAT-092, Mmata

UNAT Held or UNDT Pronouncements

UNAT affirmed the UNDT award of compensation for loss of earnings for seven months from the date of the staff member's separation from service to the date of the UNDT judgment (as an alternative to the order for reinstatement of the staff member) plus an additional amount of two years' net base salary. The Secretary-General maintained that, while the total of these amounts exceeded the compensation limit of two years' net base salary, UNDT did not particularize any reasons to justify an increased award under Article 10.5(b) of the UNDT Statute. UNAT held that Article 10.5(b) does not require a formulaic articulation of aggravating factors; rather that it requires evidence of aggravating factors that warrant higher compensation. In addition to finding that the staff member was unfairly dismissed for serious misconduct, UNDT found evidence of blatant harassment and an accumulation of aggravating factors that supported an increased award. UNAT found no error in law or in fact concerning UNDT's finding that this was an exceptional case justifying the amount of compensation awarded.

Decision Contested or Judgment/Order Appealed

The former staff member contested the decision to impose on him the disciplinary measure of separation from service without notice. UNDT found that the Secretary-General had unfairly dismissed the former staff member and ordered reinstatement with loss of earnings up to the date of reinstatement. In the alternative, UNDT ordered compensation for loss of earnings up to the date of judgment and an additional amount of compensation of two years' net base salary.

Legal Principle(s)

In exceptional cases, compensation may be ordered exceeding two years' net base salary. Article 10.5(b) of the UNDT Statute does not require a formulaic articulation

of aggravating factors; rather it requires evidence of aggravating factors that warrant higher compensation.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mmata

Entity

UNICEF

Case Number(s)

2010-092

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2010

President Judge

Judge Boyko

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Maximum amount / exceptional circumstances

Evidence

Evidence of harm

Applicable Law

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2010/053