

# **2011-UNAT-114, Bertucci**

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General and a cross-appeal by Mr Bertucci. Recalling that compensation in the absence of actual injury is without legal basis, UNAT held that UNDT erred in law. However, acceding in part to the cross-appeal by Mr Bertucci, UNAT held that when the disciplinary procedure does not bear out allegations against a staff member that may have been considered during a preliminary investigation, entitlements that may have been lawfully withheld pursuant to administrative instruction ST/AI/2004/3 must be paid in full, including interest. UNAT held that the award of USD 500 in compensation represents a fair assessment of the injury suffered by Mr Bertucci due to the non-payment of interest. UNAT dismissed the appeal and the remainder of the cross-appeal and affirmed the UNDT judgment based on the substitution of grounds.

## Decision Contested or Judgment/Order Appealed

Mr Bertucci contested the withholding of payment due to him upon retirement to hold him financially responsible for alleged negligence. Subsequently, negligence was not imputed to him and the amount due to him was paid. UNDT found that the payment had been legally withheld and that Mr Bertucci had suffered no prejudice, however, it awarded him compensation in the amount of USD 500.

## Legal Principle(s)

Compensation in the absence of actual injury is without a legal basis.

## Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Bertucci

## Entity

OIOS

## Case Number(s)

2010-109

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

11 Mar 2011

## President Judge

Judge Courtial

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Evidence of harm

## Applicable Law

Administrative Instructions

- ST/AI/2004/3

## Related Judgments and Orders

UNDT/2010/094