

# **2011-UNAT-134, Larkin**

## **UNAT Held or UNDT Pronouncements**

UNAT considered appeals against UNDT judgment Nos. UNDT/2010/108 and UNDT/2010/109 jointly. UNAT held that UNDT correctly ascertained that the failure by the APPC to share with the Appellant an inter-office memorandum prepared by his supervisor regarding the non-extension of his appointment did not affect his legal situation. UNAT held that the Appellant did not demonstrate that the UNDT's finding of fact was not supported by the evidence or that it was unreasonable. UNAT held that the principle that the party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds applied in the case. UNAT noted that in judgment No. UNDT/2010/108, UNDT accepted the procedural flaws and ruled that the decision not to renew the Appellant's fixed-term appointment was not in conformity with his terms of appointment and rescinded the decision. UNAT held that the Appellant had not demonstrated that UNDT erred in not requiring his former supervisor to provide oral testimony to UNDT. UNAT held that it had taken note of the Appellant's claim against the Office of Staff Legal Assistance and would consider and dispose of it in a separate judgment. Noting that UNDT has the discretion to determine the amount of damages awarded, taking into account the circumstances of the case, UNAT held that UNDT did not err in the exercise of its discretion, including in its finding that the decision relating to commutation of his accrued annual leave days was time-barred. UNAT held that the Appellant did not show that UNDT erred in its judgments. UNAT dismissed the appeals and upheld the UNDT judgments.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the non-extension of his appointment and the non-transmittal of an inter-office memorandum received by the Appointments, Posting and Promotions Committee (APPC). In judgment No. UNDT/2010/108, UNAT rescinded the non-extension decision (providing as an alternative in lieu compensation) and found that the non-transmittal of the memorandum did not

constitute an administrative decision and, as such, was not receivable. In judgment No. UNDT/2010/109, UNDT consolidated two applications related to the non-renewal of the Applicant's appointment, concluding that the Administration had conducted the Applicant's separation procedures in accordance with the rules and that his application relating to commutation of his annual leave was time-barred.

## Legal Principle(s)

It is insufficient for an appellant to state that he or she disagrees with the findings of fact or to repeat the arguments submitted before UNDT; an appellant must identify the apparent error of fact in the judgment and the basis for contending that an error was made. The party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. UNDT has broad discretion to determine the admissibility of any evidence and the weight to attach thereto. UNDT has the discretion to determine the amount of damages awarded, taking into account the circumstances of the case.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Larkin

## Entity

UNHCR

## Case Number(s)

2010-127

2010-128

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

8 Jul 2011

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Annual leave

Non-renewal

Arbitrary or improper motive

## Applicable Law

Former Staff Rules

- Rule 111.2(a)

UNDT RoP

- Article 18.1

## Related Judgments and Orders

UNDT/2010/108

UNDT/2010/109  
2010-UNAT-051  
2011-UNAT-123  
2010-UNAT-077  
2010-UNAT-048