

2011-UNAT-188, Harding

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the compensation awarded to Ms Harding for the loss of salary and other entitlements from the date of her dismissal to the date of the UNDT judgment with interest was excessive. UNAT held that it must take into account that she received compensation on or around 18 February 2008 and it could not consider the loss of earnings as actual harm after that date when the non-reinstatement was known to the claimant and the offered compensation caused by that circumstance had already been paid. UNAT held that a total of 2.5 years' net base salary constituted adequate compensation of all of her claims. UNAT upheld the appeal and reduced Ms Harding's compensation to a total of two years and six months' net base salary, plus the special post allowance which was not appealed.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss her for serious misconduct in the form of submitting fraudulent medical insurance claims for reimbursement. The Joint Disciplinary Committee (JDC) found that the decision was flawed by factual errors and violations of due process rights and recommended rescission, reinstatement and compensation. The High Commissioner accepted the findings of the JDC and decided to pay her two years' net base salary as compensation in lieu of reinstatement in addition to six months' net base salary for the violation of her due process rights. UNDT, limiting itself to the issue of compensation, upheld the decision, awarding an additional six months' salary for moral compensation; all salaries and entitlements due to her up until the date of the UNDT judgment; and Special Post Allowance (SPA), with interest, for a four-month mission.

Legal Principle(s)

The period of compensation for loss of earnings resulting from dismissal should be limited to two years, except where compelling reasons would lead to a different judgment, and that compensation must be calculated taking into account the net base salary and entitlements not related to actual service performance after deducting any salaries and entitlements that the staff member received during the period considered, based on the situation as at the beginning of that period.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Harding

Entity

UNHCR

Case Number(s)

2011-196

Tribunal

UNAT

Registry

New York

Date of Judgement

21 Oct 2011

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Summary dismissal

Applicable Law

UNDT Statute

- Article 10.5
- Article 10.5(a)
- Article 10.5(b)

Related Judgments and Orders

UNDT/2011/017

2011-UNAT-131