

2012-UNAT-201, Obdeijn

UNAT Held or UNDT Pronouncements

The Appellant contested the UNDT finding that he was afforded full and fair consideration for the position of Chief and argued that he suffered unfair and discriminatory treatment. UNAT held that if the Administration does not comply with a Tribunal's order to disclose the reasons for an administrative decision, as such, the Tribunal cannot automatically conclude that the decision was arbitrary, but it is entitled to draw an adverse inference from the refusal. UNAT affirmed the UNDT finding that the Administration's decision must be deemed unlawful, as the Secretary-General refused to comply with the UNDT order to disclose the reasons for the administrative decision not to renew the Appellant's appointment and the Administration did not discharge the burden of proving that its decision was neither arbitrary nor tainted by improper motives. UNAT affirmed UNDT's award for moral injury in the form of emotional distress as a result of the sustained lack of response created in the particular circumstances. However, UNAT found that the Appellant failed to establish any economic loss and set aside that respective award. UNAT allowed the appeal in part and affirmed UNDT's judgment, subject to variation of compensation.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his fixed-term appointment. UNDT found that the Administration had breached its obligation to disclose the reasons for the decision not to extend the Applicant's appointment, particularly in response to his requests for reasons, in violation of the requirements of good faith and fair dealing. UNDT ordered that the Applicant be paid six months' net base salary for the actual economic loss suffered and USD 8,000 for the emotional distress suffered.

Legal Principle(s)

An administration cannot legally refuse to state the reasons for a decision that creates adverse effects on the staff member, such as a decision not to renew an FTA, where the staff member requests it or, a fortiori, the Tribunal orders it. If the Administration does not comply with a Tribunal's order to disclose the reasons for an administrative decision as such, the Tribunal cannot automatically conclude that the decision was arbitrary, but it is entitled to draw an adverse inference from the refusal. Compensation may only be awarded if it has been established that the staff member actually suffered damages.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Obdeijn

Entity

UNFPA

Case Number(s)

2011-205

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Mar 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Non-renewal

Reason(s)

Applicable Law

GA Resolutions

- A/RES/63/253

Staff Rules

UNDT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2011/032

2010-UNAT-094

2010-UNAT-095

2011-UNAT-153

2010-UNAT-084