

2012-UNAT-215, Cabrera

UNAT Held or UNDT Pronouncements

The Secretary-General's appeal and Mr Cabrera's cross-appeal centred on the issue of whether placing a staff member on SLWFP violates their due process rights. UNAT noted that, in this case, UNDT created a new class of special leave, where the staff member was actually suspended with full pay. UNAT did not agree with the Secretary-General's contention that UNDT erred in concluding that the Office of Internal Oversight Services' investigation was not a preliminary investigation, as Mr Cabrera was put on leave using all the reasons under which he could be suspended. UNAT found that UNDT correctly held that Mr Cabrera was entitled to all the due process rights listed in paragraphs 6 to 9 of ST/AI/371 and, therefore, he was entitled to compensation for the violation of these rights. UNAT also found that, in Mr Cabrera's circumstances, justice would be served if compensation was reduced from two years' net base pay to 10 months' net base pay with interest on the usual terms. UNAT held that Mr Cabrera's request for an award of costs was not sustainable. UNAT granted the Secretary-General's appeal in part and reduced the compensation awarded to Mr Cabrera to 10 months' net base pay.

Decision Contested or Judgment/Order Appealed

Previous decision: Mr Cabrera contested the Secretary-General's decision not to follow the Joint Appeals Board's (JAB) recommendation that he be compensated in the amount of 3 years net base salary, following his placement on Special Leave With Full Pay (SLWFP). UNDT found in favour of Mr Cabrera and awarded him two years' net base salary.

Legal Principle(s)

The initiation of disciplinary proceedings is not a pre-requisite for putting a staff member on special leave. A charge of misconduct is a prerequisite for suspension of

a staff member with or without pay.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Cabrera

Entity

ECA

Case Number(s)

2011-225

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Mar 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Special leave (with or without pay)

Investigation

Due process

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 105.2(a)(i)
- Rule 110.2(a)
- Rule 110.3(a)(iv)

Related Judgments and Orders

UNDT/2011/081

UNDT/2010/214