

2012-UNAT-220, Mezoui

UNAT Held or UNDT Pronouncements

UNAT held that UNDT's approach, in determining the amount of compensation to be awarded to the Appellant, was reasonable. UNAT relied on its holding in Hastings (2011-UNAT-109), where it held that the trial court is in a much better position than UNAT in assessing the probabilities of a candidate being selected for a position. UNAT also found that UNDT correctly concluded that the Appellant should not be awarded any additional compensation beyond the amount already paid to her. UNAT further dismissed the Appellant's request to award costs against the Secretary-General, noting that there were no grounds to award costs to a party whose claims were rejected. UNAT reversed the imposition of costs against the Appellant after finding that the abuse of process was based on the actions of the Appellant's counsel during trial. UNAT rejected the Appellant's request for UNAT to authorise her to obtain and adduce a computation sheet from the UNJSPF of her pension losses due to her non-promotion and noted that it would be irrelevant to the determination of her appeal since UNDT did not rely upon it. UNAT further held that the recording of the UNDT hearing would not add anything to the parties' submissions and rejected this request. UNAT also rejected the Appellant's request to adduce, as additional evidence on appeal, the Code of Conduct, noting that it was a document of the court and did not constitute evidence. UNAT noted that the Appellant's remaining submissions were without merit and found it unnecessary to address them. UNAT granted the appeal in part and reversed the imposition of costs against the Appellant. UNAT dismissed all other grounds of appeal.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to select her for a post. UNAT found that the selection process was unlawful but noted that the Applicant's chances of being selected, had there been no irregularities, were only one in four. UNDT set compensation for moral damages at USD 2,000. UNDT found that, in light of the compensation that the Applicant had already received, she should consider that her rights had been more than satisfied. UNDT granted the Secretary-General's request for an order of costs for abuse of process and ordered the Applicant to pay costs to the Secretary-General. UNDT rejected the Applicant's request for an order of costs against the Secretary-General. UNDT also rejected the Applicant's request to refer the case to the Secretary-General for possible action to enforce accountability under Article 10(8) of its Statute.

Legal Principle(s)

Compensation must be set by UNDT following a principled approach on a case-by-case basis, and UNDT should be guided by two elements: (1) the nature of the irregularity, which led to the rescission of the contested administrative decision; and (2) the chance that the staff member would have had to be promoted had the correct procedure been followed.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Mezoui

Entity

ECOSOC

Case Number(s)

2011-233

Tribunal
UNAT
Registry
New York
Date of Judgement
16 Mar 2012
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Abuse of process before UNDT/UNAT
Costs
Compensation
Loss of chance
Staff selection (non-selection/non-promotion)
Selection decision
Applicable Law
UNDT Statute

- Article 10.5(b)

Related Judgments and Orders
UNDT/2011/098
2011-UNAT-152
2010-UNAT-044
2011-UNAT-109