

# **2012-UNAT-221, Simmons**

## **UNAT Held or UNDT Pronouncements**

UNAT considered Ms Simmons' appeal and the Secretary-General's cross-appeal. With respect to Ms Simmons' claim that UNDT erred when it determined that compensation of USD 500 was reasonable compensation for the procedural breaches, which occurred regarding her performance appraisal for 2007-2008, UNAT found that UNDT placed undue weight on Ms Simmons' omissions and/or actions. UNAT held that the compensation awarded for this breach was manifestly insufficient. With respect to Ms Simmons' claim that she did not receive full and fair consideration regarding Post 1, UNAT held that UNDT did not err in its assessment of the selection process and that Ms Simmons did not substantiate claims of bias or prejudice on part of the interview panel. With respect to the Secretary-General's cross-appeal, UNAT noted that, by virtue of the absence of any specific argument as to whether the claim regarding the 2008-2009 performance appraisal was receivable *ratione materiae*, having been made prior to the UNDT Order No. 325 (NY/2010), the Secretary-General was now estopped from raising such issue on appeal before UNAT. With respect to Ms Simmons' claim that an award of USD 3,000 was not reasonable compensation for the breach which occurred in relation to her 2008-2009 performance appraisal, UNAT found that UNDT did not take sufficient cognisance of the seriousness of the breach or the stress it caused. UNAT granted the appeal in part, rejected the cross-appeal and substituted UNDT's total award of USD 3,500 with an award of compensation equivalent to three months' net base salary in effect on 31 March 2008 and compensation equivalent to three months' net base salary in effect on 31 March 2009.

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

Ms Simmons contested the decisions not to select her to fill either Post 1 or Post 2, and the failure to approve her work plan for her 2007-2008 performance appraisal. UNDT rejected her application regarding her non-selection for Post 1 and Post 2. However, UNDT found that the required procedures for completing Ms Simmons'

2007-2008 and 2008-2009 performance appraisals were not followed, which warranted compensation. UNDT awarded her a total of USD 3,500 as compensation: USD 500 for the delay in completing the 2007-2008 performance appraisal and the resulting stress and USD 3,000 for the delay in completing the 2008-2009 performance appraisal and the resulting stress.

## Legal Principle(s)

UNDT or a first-instance tribunal is in the best position to assess matters of a factual nature.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Simmons

## Entity

OIOS

## Case Number(s)

2011-229

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Jun 2012

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Jurisdiction / receivability (UNAT)

Subject matter (ratione materiae)

Staff selection (non-selection/non-promotion)

Full and fair consideration

## Applicable Law

Administrative Instructions

- ST/AI/2002/3

## Related Judgments and Orders

UNDT/2011/084

2012-UNAT-222

2010-UNAT-035