

# 2012-UNAT-232, Cieniewicz

## UNAT Held or UNDT Pronouncements

UNAT noted that there was no dispute that the Appellant was designated by the Director of OCHA Geneva as Officer-in-Charge (OiC) of the Financial and Administrative Unit, following the reassignment of the holder of the post (a P-5 post) to other functions. UNAT held that UNDT had properly determined that the transfer of the P-5 holder “with his post” had the effect that there remained no “vacant” or “temporarily vacant” post against which the Appellant, albeit performing the functions of the post holder, could point to for the purposes of making the case for payment of a SPA. UNAT held that the Appellant had failed to establish a pivotal requirement of ST/AI/1999/17, namely, that at the relevant time he was carrying out the functions of a vacant post such as would have allowed the Secretary-General to exercise his discretion to pay an SPA. UNAT held that there was no basis to interfere with the UNDT’s findings that the Appellant did not meet the criteria necessary for an award of moral damages regarding the alleged delays of the Administration to address his claims for an SPA. UNAT noted that the JAB had recommended payment to the Appellant of compensation, for the delays he encountered in processing his SPA applications, and that this payment had been duly made by the Administration. UNAT dismissed the appeal and affirmed the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to grant him Special Post Allowance (SPA) on the ground that the post was not vacant from a budgetary point of view. UNDT rejected the application in respect of the decision not to grant the Applicant a SPA for the period from 21 February 2000 to 13 August 2001. UNDT found that the prerequisite condition for the grant of a SPA was the existence of either a vacant or temporarily vacant, post and that the transfer of the Chief of the Unit “with his P-5 post” was tantamount to the abolition of the post. UNDT found that, consequently, there was no budgetary post left for the Applicant to be placed against in order for him to be paid a SPA. UNDT considered that the delays in dealing with the

Applicant's claim for a SPA were not such as to cause moral damage giving rise to compensation, but that interest could have been awarded on the delay in the payment of the SPA to the Applicant, only if he had claimed payment of such interest. The Applicant appealed.

## Legal Principle(s)

When unconscionable delays occur on the part of the Administration in dealing with claims of staff members, such may give rise in certain circumstances to a compensatory award. The UNDT Judge is best placed to assess from the evidence, records or otherwise whether "particular circumstances" exist such as to give rise to a claim for moral damages.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Cieniewicz

## Entity

UNOG

## Case Number(s)

2011-249

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Jun 2012

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Special Post Allowance

Compensation

Non-pecuniary (moral) damages

## Applicable Law

Administrative Instructions

- ST/AI/1999/17

## Related Judgments and Orders

UNDT/2011/048