

2012-UNAT-233, Charles

UNAT Held or UNDT Pronouncements

UNAT held that UNDT had correctly found that the determination made by the Programme OiC, namely that the application for sabbatical leave should not be forwarded to the Committee, was not within the Programme OiC's power. UNAT held that UNDT had correctly concluded that the decision made by the Programme OiC was in breach of the Appellant's terms of employment "specifically, his right to have his application forwarded to the Committee and the [Assistant Secretary-General], OHRM". UNAT held that UNDT had properly observed that an "incomplete application may therefore be one which is missing one of the documents specified in [paragraphs 4 and 5 of ST/IC/2009/33]". UNAT upheld, however, the Appellant's contention that the application was not incomplete and that his proposal did not lack a schedule of work; rather it contained a schedule with a timeframe that was at variance with the period of leave for which he had applied. UNAT held that UNDT, by effectively placing itself in the role of the Committee and determining the outcome of the Appellant's application on the merits (a role only the Committee should have performed), erred in law and failed to consider the effects to the Appellant of the breach of his employment rights. UNAT upheld the appeal in part and vacated the UNDT judgment in part to grant the Appellant compensation in the amount of one month's net base salary, with interest at the US Prime rate.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Programme Officer in Charge's (OiC) decision not to forward his application for sabbatical leave to the appropriate Committee. UNDT found that the Programme OiC had reasonably concluded that the leave application was incomplete, but that she did not have the authority to take that decision herself. UNDT, therefore, found that the Applicant's right to have his leave application submitted to the Committee was breached. UNDT, however, found that in any event, without a relevant work schedule included in the application, the Committee could not have considered it and, consequently, that the Appellant had suffered no loss.

UNDT found that there was no basis to award damages and dismissed the application. The Applicant appealed.

Legal Principle(s)

As a matter of logic, the provisions of Section 1. 2 and Sections 4. 1 and 4. 2 of ST/AI/2000/4 when read together with paragraph 6 of ST/IC/2009/33 (the relevant circular at the time in question) stipulate that the staff member's application for sabbatical leave (and the study proposal contained therein) fell to be evaluated by the Committee. Not every violation of a staff member's rights will necessarily lead to an award of compensation.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Charles

Entity

UNDP

Case Number(s)

2011-251

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
Sabbatical

Applicable Law

Administrative Instructions

- ST/AI/2000/4

Information Circulars

- ST/IC/2009/33

Related Judgments and Orders

UNDT/2011/139

2010-UNAT-095

2010-UNAT-094