

2012-UNAT-246, Mwamsaku

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General limited to the amount of compensation. UNAT held that, in the present case, UNDT had not recorded any reasons for holding that this was indeed an exceptional case, warranting an award higher than two years' net base salary. UNAT held that the award of full salary payable between separation and the date of the UNDT judgment was fraught with ambiguity and uncertainty since the staff member might have been separated from service on other non-disciplinary grounds. UNAT held that it would be adequate, fair, and reasonable to award compensation in lieu of reinstatement in an amount equal to one year's net base pay. UNAT upheld the appeal in part and vacated the UNDT judgment in part to reduce the quantum of compensation in lieu of reinstatement.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate her appointment for misconduct. UNDT found that the facts on which the disciplinary measure was based had been established in relation to the Applicant's failure to detect the loss of 704 semi-empty/empty oil cartons in the warehouse during her daily and weekly inventory checks. UNDT, however, found that the established facts did not constitute misconduct within the meaning of the Former Staff Rule 110. 3, and that the penalty of separation from service was disproportionate and unwarranted. UNDT found that a thorough investigation had not been conducted and that it was therefore not reasonable or just to conclude that misconduct had occurred. UNDT ordered rescission of the administrative decision to terminate the Applicant's appointment, reinstatement and compensation for loss of earnings from the date of her separation from service (1 October 2008) to the date of her reinstatement. In the alternative, UNDT awarded compensation for the loss of earnings from the date of her separation from service to the date of the UNDT judgment. UNDT further awarded compensation in the amount of six months' net base salary in effect at the time of her termination for the procedural irregularities during the investigation and

disciplinary process.

Legal Principle(s)

Under Article 10 of the UNDT Statute, where UNDT rescinds the contested administrative decision of termination, it must necessarily set an amount of compensation in lieu of rescission or specific performance. The UNDT Statute provides no guidelines in the matter of determining the quantum of compensation; however, the elements which can be considered are, among others, the nature and the level of the post formerly occupied by the staff member (i. e. , continuous, provisional, fixed-term), the remaining time and chances of renewal. It must also be taken into account that the two-years' net base salary limit on compensation imposed by the UNDT Statute constitutes a maximum amount, as a general rule with exceptions and, as such, cannot be the average in lieu compensation established by the court.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Mwamsaku

Entity

WFP

Case Number(s)

2011-265

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Disciplinary matters / misconduct

Dismissal/separation

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

Former Staff Rules

- Rule 110.3

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2011/163

2010-UNAT-087

2011-UNAT-131

2011-UNAT-188

UNDT/2011/067