

2012-UNAT-247, Mushema

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. 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 his 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 even one of 704 semi-empty/empty oil cartons in the warehouse during the regular physical inventory. UNDT, however, found that the established facts did not constitute misconduct within the meaning of former Staff Rule 110. 3, and that the penalty of separation from service was disproportionate and unwarranted. UNDT found that the Applicant was unfairly dismissed. UNDT ordered rescission of the administrative decision to terminate the Applicant's appointment, his reinstatement and compensation for loss of earnings from the date of his separation from service to the date of his reinstatement. In the alternative, UNDT awarded compensation for the loss of earnings from the date of his 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 his 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 considered 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

Mushema

Entity

WFP

Case Number(s)

2011-266

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(vii)

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders
UNDT/2011/162