

2012-UNAT-254, Nyakossi

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT noted that UNDT did not find that the Applicant was distressed by UNHCR's illegal conduct or that he had suffered any adverse consequences or harm from UNHCR's procedural error in following the opinion of DSS. UNAT held that UNDT had exceeded its competence and made an error in law in awarding compensation to the staff member since he had not suffered pecuniary loss or distress and was not harmed by the illegal conduct. UNAT upheld the appeal and reversed the UNDT judgment regarding the award of damages to the staff member.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to retain his application for P-3 and P-4 Field Safety Adviser (FSA) posts. UNDT found that: 1) the Applicant's appeal of UNHCR's decision was receivable; 2) UNHCR had rejected the application solely because the Department of Safety and Security (DSS) had denied him clearance; 2) UNHCR was not compelled to follow DSS' evaluation of the Applicant's qualifications for candidacy for the pool of FSA posts, and it was a procedural irregularity for it to do so, but that it was highly unlikely that the Applicant would have been placed in the pool of candidates for FSA posts even if UNHCR's procedure were regular due to the insufficiency of his managerial experience in the security field and his fluency only in French. UNDT awarded the Applicant compensation for the procedural irregularity.

Legal Principle(s)

Compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury. Not every violation of a staff member's legal rights or due process rights will necessarily lead

to an award of compensation. Where the staff member does not show the procedural defect had any impact on him, his circumstances or his entitlements, and that he suffered no adverse consequences or harm from the procedural defect, compensation should not be awarded.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nyakossi

Entity

UNHCR

Case Number(s)

2011-237

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

Staff selection (non-selection/non-promotion)

Eligibility

Applicable Law

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2011/101

2010-UNAT-094

2011-UNAT-109

2012-UNAT-201

2010-UNAT-042

2010-UNAT-095