

# 2012-UNAT-264, Seddik Ben Omar

## UNAT Held or UNDT Pronouncements

UNAT rejected the request for an oral hearing finding that the factual and legal issues had already been clearly defined by the parties. UNAT noted that there was no record of the Appellant ever having sought or been granted leave to submit further submissions or evidence prior to the UNDT decision under appeal. UNAT held that the Appellant, consequently, failed to establish that UNDT erred in finding that the Appellant had not produced sufficient evidence of distress linked specifically to the placement of the Note to warrant compensation for emotional distress. UNAT held that the evidence contemplated by the Appellant would not be admissible since it was known to the Appellant and should have been presented at the level of UNDT. Considering that, at the time of the placement of the Note in the Appellant's file, he was not even a UN staff member and the subsequent action by the Secretary-General to allow the Appellant the opportunity to place his comments in his file, UNAT held that there were no circumstances which would warrant calling on any official to account for his or her actions. Regarding the Appellant's request for costs against the Respondent, UNAT held that there was no evidence before it which would permit finding that the Respondent had been guilty of manifestly abusing the appeals process. UNAT held that the Appellant had failed to establish that UNDT erred in finding that there was insufficient evidence of emotional distress. UNAT further held that the Appellant had not made out a case for referral for accountability, nor for an order for costs. UNAT dismissed the appeal and affirmed the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions: 1) not to renew his fixed-term appointment; 2) to deny him the payment of his salary and entitlements; 3) to place the Note on his Official Status File (OSF), and 4) claiming loss of employment opportunities and defamation. UNDT found that the placement of the Note in the OSF was unlawful and ordered its removal. UNDT awarded the Applicant compensation for the prejudice to him caused by the placement of the Note. UNDT rejected the request for compensation for emotional distress finding that the Applicant had not produced sufficient evidence of distress linked specifically to the placement of the Note. UNDT also dismissed the Applicant's claims regarding the non-renewal of his appointment and the non-payment of salary and other entitlements. The Applicant appealed.

## Legal Principle(s)

Evidence that was known to the Appellant and should have been presented at the level of the UNDT or other first-instance tribunal is not admissible before UNAT (Article 2. 5 of the UNAT Statute). Costs can be awarded against a party who has manifestly abused the appeals process.

## Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Seddik Ben Omar

Entity

UNAMI

Case Number(s)

2011-282

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence

Admissibility

Referral for accountability

Applicable Law

UNAT Statute

- Article 9.2
- Article 9.5

UNDT Statute

- Article 2.5

Related Judgments and Orders

UNDT/2011/182