

2012-UNAT-272, Abubakr

UNAT Held or UNDT Pronouncements

UNAT considered the appeals by the Secretary-General and by Mr Abubakr. Regarding the Secretary-General's appeal, UNAT agreed with UNDT that the Administration had failed to address Mr Abubakr's complaint of harassment and discrimination with the required due diligence. UNAT held that UNDT had not erred in law and fact in choosing not to recognize, in any way meaningful, the majority of the actions relied on by the Secretary-General to address Mr Abubakr's complaints. UNAT held that, by virtue of the "dysfunctional" work of the Panel on Discrimination and Other Grievances (PDOG), Mr Abubakr was left bereft of any proper process through which his claims of harassment and discrimination could be addressed. UNAT rejected the Secretary-General's pleas that UNDT's finding that Mr. Abubakr's predicament merited compensation was erroneous in law and fact. UNAT held that what Mr. Abubakr was being compensated for in the UNDT judgment was the harm caused to him by the fact that he was deprived, by virtue of the breach of his employment rights, of the statutory due process he should have benefited from, as provided for by ST/AI/308/Rev. 1. UNAT held that, while it was not persuaded that the expert medical evidence produced could assist the UNDT Judge, it would nevertheless uphold the UNDT decision that Mr Abubakr's predicament merited a compensatory award. UNAT held, however, that UNDT erred somewhat on the generous side in comparing the due process deprivations suffered by Mr Abubakr to those in the Applicant case (judgment No. UNDT/2010/148). UNAT reduced the compensation awarded to USD 25,000. Regarding Mr Abubakr's appeal, UNAT held that the additional issues Mr Abubakr raised extended the scope of the case well beyond the previously agreed by the parties. UNAT held that none of the issues was capable of being litigated since no administrative review had been sought regarding them. UNAT upheld UNDT's finding that Mr Abubakr had failed to establish that he sustained actual economic loss warranting compensation by reason of the PDOG's irregularities. Mr Abubakr's appeal was dismissed in its entirety. UNAT upheld the Secretary-General's appeal in respect of the UNDT's award of monetary compensation, which was reduced to USD 25,000.

Decision Contested or Judgment/Order Appealed

Mr Abubakr challenged the Organisation's failure to address his complaint of harassment and discrimination seeking compensation. UNDT found that the Organisation had failed to properly address Mr Abubakr's complaint of harassment and discrimination and, therefore, breached his contract. UNDT awarded Mr Abubakr USD 40,000 as compensation for the emotional distress caused by those failures but rejected the request for compensation for actual economic loss.

Legal Principle(s)

UNDT is vested with the statutory power to determine, in the circumstances of each case, the remedy it deems appropriate to rectify the wrong suffered by the staff member whose rights have been breached.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Abubakr

Entity

ITSD

Case Number(s)

2012-298
2012-303
Tribunal
UNAT
Registry
New York
Date of Judgement
1 Nov 2012
President Judge
Judge Faherty
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Non-pecuniary (moral) damages
Pecuniary (material) damages
Disciplinary matters / misconduct
Discrimination (see category: discrimination)
Harassment (non-sexual)
Discrimination and other improper motives
Staff selection (non-selection/non-promotion)
Applicable Law
Administrative Instructions

- ST/AI/308/Rev.1

Related Judgments and Orders
UNDT/2011/219
UNDT/2010/148