

2013-UNAT-282, Lauritzen

UNAT Held or UNDT Pronouncements

On the alleged procedural error of the UNDT not allowing an oral examination of witnesses, UNAT held that it was well within the competence of UNDT to manage its cases as it saw fit and that the Appellant had not demonstrated how the procedure affected or violated her due process rights; UNAT dismissed this ground of appeal. UNAT held, affirming the finding of UNDT, that the Appellant failed to establish that the decision to remove her from her post in Budapest constituted a disguised disciplinary measure. UNAT found no merit in the ground of appeal that UNDT failed to consider that UNHCR denied her the opportunity to respond to the removal decision. UNAT held that it was within the discretion of the Secretary-General to decide to remove her from the post. UNAT held that UNDT correctly judged the validity of the Secretary-General's exercise of discretion in administrative matters and affirmed the finding by UNDT that the withdrawal of the Appellant from the post was lawful. UNAT held that the Appellant's placement on SLWFP as a SIBA was in accordance with the relevant Staff Rule. However, UNAT held that UNHCR's failure to assign the Appellant to an alternate post commensurate with her grade, training, skills and experience and its failure to recommend her for any other job for 52 months was unacceptable. UNAT held that as long as the Appellant remained a staff member, she was not only entitled to be paid, but she also had a right to be given work. UNAT held that the UNDT correctly awarded compensation for the moral damage she suffered from the illegality committed by keeping her on SLWFP as a SIBA for more than four years. UNAT considered the award of USD 15,000 adequate and dismissed the ground of appeal requesting a higher award. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to remove her from her post in Budapest and to place her on Special Leave With Full Pay (SLWFP). UNDT found that the Applicant had failed to establish that the decisions were illegal; however, UNDT found that the decision to keep her on SLWFP as a staff member in between assignments (SIBA) for over four years, until retirement, was unlawful and awarded moral damages.

Legal Principle(s)

It is well within the competence of UNDT to manage its cases as it sees fit. When judging the validity of the Secretary-General's exercise of discretion, it is not the role of UNDT to consider the correctness of the choice made amongst the various options or to substitute its own decision for that of the Secretary-General. It is the moral right of a staff member to be given work to do in order to earn his or her salary.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Lauritzen

Entity

UNHCR

Case Number(s)

2011-188

Tribunal

UNAT

Registry

New York
Date of Judgement
28 Mar 2013
President Judge
Judge Adinyira
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
TEST -Rename- Benefits and entitlements-45
Special leave (with or without pay)
Compensation
Non-pecuniary (moral) damages
Procedure (first instance and UNAT)
Case management
Applicable Law
Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 105.2(a)

UNAT RoP

- Article 8
- Article 8.2(b)

UNDT RoP

- Article 17.6

UNDT Statute

- Article 9.2

Related Judgments and Orders

UNDT/2010/172
2010-UNAT-012
2010-UNAT-084
2012-UNAT-201
2011-UNAT-123
2011-UNAT-134
2012-UNAT-236
2011-UNAT-168