

# 2013-UNAT-307, Shanks

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General against judgment Nos. UNDT/2011/209 (on liability) and UNDT/2012/062 (on relief). UNAT held that there was no evidence to support the UNDT's conclusion that, had the UN Staff Pension Committee (UNSPC) not proceeded with its determination, Ms Shanks would more likely than not have been found fit to resume her duties. UNAT held that the only valid conclusion available on the medical evidence was that Ms Shanks was not entitled to return to work on a part-time basis since she was not able to obtain medical clearance permitting it. UNAT held that it was proper for the Secretary-General to terminate Ms Shanks' appointment, since there was no other option. UNAT held that Ms Shanks' inability to satisfy the minimum UNDP policy requirements for part-time employment was a crucial piece of evidence that UNDT had failed to properly consider and that this failure led the UNDT to serious factual errors, resulting in manifestly unreasonable decisions. UNAT held that these factual errors tainted both UNDT judgments and rendered the findings therein untenable. UNAT held that the failure of human resources to inform Ms Shanks that a determination of disability would result in her termination had no consequences for Ms Shanks. UNAT held that Ms Shanks suffered no actual prejudice which could result in compensable damages. UNAT upheld the appeal and vacated both UNDT judgments.

## Decision Contested or Judgment/Order Appealed

The Applicant, who was seriously injured in a motor vehicle accident en route to work, was hospitalised and remained on sick leave for many months, contested the decision to separate her from service for reasons of incapacitation. In judgment No. UNDT/2011/209, UNDT found in favour of the Applicant on liability. In judgment No. UNDT/2012/062, UNDT awarded the Applicant pecuniary and non-pecuniary damages.

## Legal Principle(s)

Actual prejudice is required in order to receive an award of compensation.

## Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Shanks

Entity

UNDP

Case Number(s)

2012-339

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Evidence

Medical evidence

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Health reasons

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNDP Policy on Flexible Working Arrangements

Related Judgments and Orders

UNDT/2012/062

2010-UNAT-042

2010-UNAT-095

2011-UNAT-114

2012-UNAT-201

2010-UNAT-065

2010-UNAT-026bis