

2013-UNAT-309, Asariotis

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General and a cross-appeal by Ms. Asariotis. Considering first the cross-appeal, UNAT found no merit in the ground of appeal related to claimed errors in procedure on the part of UNDT. UNAT held that UNDT's failure to deal specifically with certain issues, namely the benefits Ms. Asariotis lost and priority that would have been afforded to her as a female candidate, did not manifestly affect the outcome of the case, in view of the UNDT's conclusion that the decision to cancel the vacancy announcement was lawful. UNAT held that UNDT was correct in finding the decision to cancel the vacancy announcement to be lawful given the numerous irregularities in the selection procedure. UNAT held that, insofar as Ms. Asariotis sought a remedy for being caught up in a selection process tainted by irregularity, she was afforded such a remedy when the process was cancelled, and the vacancy re-advertised. UNAT dismissed the cross-appeal. Considering the Secretary-General's appeal on the issue of compensation for loss of chance, UNAT held that there was no selection against which Ms Asariotis' loss could be measured and, in determining otherwise, UNDT erred in law. UNAT upheld the Secretary-General's appeal on that issue and vacated the award of compensation. Considering the Secretary-General's appeal on the issue of moral compensation, UNAT held that the case did not qualify for UNDT to invoke its statutory jurisdiction to award damages for moral injury as Ms Asariotis was placed in no worse a situation than the other candidates for the post. UNAT held that there was no breach of her contractual entitlements nor, given the nullified status of the selection process, could it be said that her procedural entitlements were breached. UNAT vacated the award of moral compensation. UNAT upheld the Secretary-General's appeal, reversed the UNDT judgment to the extent set out above, and upheld the UNDT judgment on the lawfulness of the decision to cancel the post.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to cancel a vacancy announcement after a selection procedure lasting nearly 3.5 years. Although UNDT found the impugned decision lawful, it held there had been procedural violations and awarded compensation for loss of opportunity and moral damages.

Legal Principle(s)

Damages for a moral injury may arise from a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed, and where the breach is fundamental in nature, the breach may of itself give rise to an award of moral damages. An entitlement to moral damages may also arise where there is evidence, by way of a medical psychological report or otherwise of harm, stress or anxiety caused to the employee, which can be directly linked or reasonably attributed to a breach of his or her substantive rights and where UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award. Not every breach will give rise to an award of moral damages.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Asariotis

Entity

UNCTAD

Case Number(s)

2012-344

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Non-pecuniary (moral) damages

Pecuniary (material) damages

Staff selection (non-selection/non-promotion)

Related Judgments and Orders

UNDT/2012/066

2010-UNAT-042

2010-UNAT-076

2012-UNAT-205

2011-UNAT-143

2012-UNAT-233

2012-UNAT-272
2010-UNAT-096
2011-UNAT-109
2011-UNAT-141