

2013-UNAT-347, Appleton

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr Appleton and a cross-appeal by the Secretary-General. UNAT held by majority that UNDT did not make an error of law or fact resulting in a manifestly unreasonable decision when it declined to award compensatory damages to Mr Appleton. UNAT held that it was entirely appropriate for UNDT to approach the issue of compensation under Article 10(5) of the UNDT Statute by engaging in a consideration of Mr Appleton's likely prospects of success. UNAT held that UNDT correctly found that Mr Appleton's appointment to the post was not a foregone conclusion and thus he had no expectation of being appointed. UNAT held that, as UNDT found, Mr Appleton should have reasonably believed that it was unlikely that he would be appointed to the post when the vacancy was re-advertised. UNAT held that there was no error in the approach of UNDT in determining the amount of moral damages to award to Mr Appleton. On the Secretary-General's challenge to the statement of UNDT on cross-appeal, regarding the inappropriateness of high-level UN officials to comment publicly on a pending selection process, UNAT held that the statement by UNDT was not a ruling of any sort and could not be considered separately from the Secretary-General's second claim on cross-appeal, which challenged the UNDT's consideration of the highly public selection process as a factor in awarding moral damages. UNAT held that since the Secretary-General did not challenge the UNDT's consideration of the other factors listed as grounds for the award of moral damages to Mr Appleton, such as delay, frustration, distress and anxiety, and such factors clearly supported an award of moral damages, the Secretary-General's claim came to naught, and the cross-appeal should be dismissed. On Mr Appleton's request for costs, UNAT held that, although it had found no merit in the Secretary-General's cross-appeal, it did not find that the cross-appeal was frivolous or that its filing was an abuse of process, and therefore denied the request. UNAT dismissed the appeal (Judge Chapman partially dissenting) and the cross-appeal.

Decision Contested or Judgment/Order Appealed

UNDT Judgment: The Applicant contested the decision to reject his nomination for a post. UNDT found for the Applicant and awarded damages of USD 30,000.

Legal Principle(s)

There is more than one method by which the trial court can assess compensatory damages, and it is up to that court to determine the method to employ in each case. It is well within the discretion of UNDT to determine the amount of moral damages to award for procedural violations in light of the unique circumstances of each case; the amount may vary from case to case depending on the factors considered by UNDT.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Appleton

Entity

OIOS

Case Number(s)

2012-390

Tribunal

UNAT

Registry
New York
Date of Judgement
28 Jun 2013
President Judge
Judge Chapman
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Non-pecuniary (moral) damages
Pecuniary (material) damages
Staff selection (non-selection/non-promotion)
Applicable Law
UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2012/125
2012-UNAT-219
2011-UNAT-109
2011-UNAT-117
2010-UNAT-052
2012-UNAT-245
2010-UNAT-059
2013-UNAT-309
2013-UNAT-298
2012-UNAT-232
2011-UNAT-131
2010-UNAT-092
2010-UNAT-095